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The Consequences of Non-Observance of True Fiscal Federalism in the federal System of Government: *Nigeria Stamp Duties' Act and Collection Power in Perspective*

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Abstract

In the Federal system of government, legislative power is shared between the Federal government and the federating units. Nigeria operates federal system of government but in-evitable conflict exists in its system between the Federal Government and State Government and even within the Federal Government agencies. This paper examined the consequences of non-observance of true fiscal federalism in the Federal System of Government; and to achieve that, the paper looks at the Nigeria Stamp Duties' Act and collection power of the Federal and State Governments and the agencies of the Federal Government. The paper used doctrinal research method whereby primary and secondary sources of materials were examined for the study. The paper found that even though the tax is viable in the Nigerian fiscal system considering the need for the increase of the revenue sources in Nigeria. But the conflict of the tiers of government and their agencies on imposition and collection of the stamp duties tax is in-evitable and may affect the achievement of government revenue generation. Also the taxpayer may use that conflict as a reason for not paying the tax as at when due. The paper, therefore, recommends for amendment of all the Stamp Duties Acts and come up with a unified Act that would observed the true fiscal federalism on the powers of the tiers of government and their agencies.

Keywords: Federalism, Stamp Duties Tax, Electronic receipt, Imposition and Collection, Conflict, Amendment

1.0 Introduction

This paper sets out to examine the consequences of non-observance of true fiscal federalism in the Federal System of Government; and in order to achieve that, the paper loot at the Nigeria Stamp Duties' Act and collection power. Even though Nigeria adopted federal system of Government where there is Federal Government and the federating units operating separately within each constitutional legislative powers, the collection of stamp duties in Nigeria has been a subject of controversy between the agencies of government particularly as it relates to stamp duties on receipts, electronic transfers and teller deposits on behalf of the Federal Government under Stamp Duties Act and even between the Federal and State tier of government in Nigeria.

Stamp Duties is a tax on Commercial and Legal Documents which record and give effect to certain transactions. It is not a tax on transactions, hence even if the transactions is aborted, Stamp duty is

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payable on the document and at the same time, where the transactions was done orally, no duty will be due since no document will be available for stamping.[614]

2.0 Definition of Federalism

Federalism is the legal relationship and distribution of powers between the national and regional governments within a federal system of government.[615] According to Nwabueze, federalism is an arrangement whereby powers of governments within a country are shared between a national country-wide government and a number of regionalized governments in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all others.[616]

Federalism is classified into two (2): Dual Federalism and Cooperative Federalism. For the former, the Constitution created two separate and independent tiers of government with their own clearly defined areas of responsibilities, and in such a system, it is inevitable that a certain tension and competition exist. Cooperative Federalism on the other hand, simply refers to making Federalism work through cooperation between the various levels of government because it emphasizes the partnership where the different levels of government providing effective public services for the Nation.[617] In order words, Dual Federation is a concept of Federal-State relationship whereby both governments enjoys exclusive and non-overlapping spheres of authority. This is a normal type of Federalism as States remains as administrative subdivision of the Federal Government. This has been referred to as the layer-cake Federalism since each level of Governments has their own administrative and legislative jurisdiction.[618] Justice Brewer[619] described Dual Federalism as "a dual system of government, National and State, each operating within the same territory and upon the same persons; and yet working without collision, because their functions are different." Thus, it ensures that each state remains sovereign despite being control to some extent by the Federal Government and States possess exclusive control over their natural resources and their localities.

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[614] See Carlil v Carbolic Smoke Ball Co. (1892)2 QB 484 where it was held that a contract was made by acceptance and, as that was not in writing, no stamp was needed, however land matters must be in writing as required by section 4 Statute of Fraud.

[615] A Bryan, Garner, Black's Law Dictionary, 8th Edition

[616] BO Nwabueze, The Presidential Constitution of Nigeria, London: C. Hurst & Coy, 1982, p. 37

[617] A Salami, Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, challenges and policy options, 2011 Vol. LVI, No. 189, Economic Annals, California Law Review, P.36

[618] RasyikaMd Khalid, Federalism Concepts and Issues in managing the Malaysia Water Sector and technology, International Journal of Engineering, January 7 (3.30) (2018) available at <www.researchgate.nectpublication/328>accessed 18/08/2020 @ 2:00pm

[619] In South Carohina v United States (1905) U.S. 437@456

3.0 Fiscal Federalism in the Nigeria Federal System

Federalism in Nigeria refers to the devolution of self-governance by the West African nation of Nigeria to its federated states, who share sovereignty with the Federal Government.[620] Federalism in Nigeria can be traced to Sir Frederick Lord Lugard, when the Northern and Southern protectorates were amalgamated in 1914.[621]The Nigeria Federal system metamorphosed from a two tiered federal arrangement of federal and states government to the current three tiered federal system of 36 states, 1 Federal Capital Territory and 774 Local governments.[622]

3.1 Legislative Powers of the Tiers of Government in Nigeria

Legislative powers of the tiers of government in Nigeria are vested in the Federal and State tiers by the Constitution. The Constitution states that the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the federation which shall consist of a Senate and a House of Representatives.[623] It goes further to state that the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in part 1 of the second schedule to this constitution; and such powers of the National Assembly on the items in Exclusive legislative list is exclusively reserved.[624] The Constitution also states that the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State; and such house has power to make laws for the peace, order and good government of the State or any part thereof.[625]In accordance with the above provisions and apart from listed items in the Exclusive legislative list, there are items on the concurrent legislative list in the Constitution where National and States Houses of Assembly share legislative powers.[626] Residual legislative list is exclusive to the State House of Assembly.[627]

3.1.1 Legislative Powers of the Federal Government in relation to Taxation

Taxes exclusive to the federal government these are taxes expressly stated in the exclusive legislative list part 1 second schedule to the constitution. These are

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[620] CJ Ebegbulem, Federalism and the politics of Resource Control in Nigeria: a critical analysis of the Niger Delta crisis, International Journal of Humanities and Social Sciences, Vol. 1 No. 12, Sept., 2011, p. 221

[621] Federalism in Nigeria, available online at <https://en.wikipedia.org/wiki/Federalism_in_Nigeria#:~:text=Federalism%20in%20Nigeria%20refers%20to,protectorates%20were%20amalgamated%20in%201914> last accessed on 28th November, 2020 @ 12:25 pm

[622] Section 2(2) and 3(6) Constitution of the Federal Republic of Nigeria, 1999 as amended; A Salami, Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, challenges and policy options, 2011 Vol. LVI, No. 189, Economic Annals, California Law Review, P. 27

[623] Section 4(1) Constitution of the Federal Republic of Nigeria, 1999 as amended; O Akanle, An Analysis of the New Sales Tax Decree 1986, Nigeria current law Review 1987 NIALS, 1997, P.82

[624] *Ibid*, section 4(2)(3) of the Constitution

[625] *Ibid*, section 4(6)(7) of the Constitution

[626] *Ibid*, See section 4(4)(7) and Part II, Second Schedule of the Constitution

[627] *Ibid*, section 4(7)(c) of the Constitution; Attorney General of ABIA State & 35 Ors. v Attorney General of the Federation (2002) 3 SCJ

i. Customs and exercise duties – item 16 Exclusive legislative list
ii. Export duties –item 25 Exclusive legislative list
iii. Stamp Duties –item 58 Exclusive legislative list iv. Taxation of incomes, profit and capital gain, except as otherwise prescribed by the constitution – item 59 Exclusive legislative lists[628].

Pursuant to these items the personal income tax, petroleum profits tax, stamp duties, custom and excise duties and capital gains tax have been imposed by the Federal Government[629].

Note, the Constitution allows Federal Government, in exercising its vested powers stated above on capital gains, incomes or profits of persons other than companies, and documents or transactions by way of stamp duties, to delegate the collection power of any of such tax or duty or the administration of the law imposing it to be carried out by the Government of a State or other authority of a State.[630]

3.1.2 Legislative powers of the State Government in relation to Taxation

As a general rule, State Government under the Nigerian Constitution has only collection power on the taxes delegated to it for collection by the Federal Government. Items D7 and D8 of the concurrent legislatives list part 11 second schedule provides:

D7 In the exercise of its powers to impose any tax or duty on:

a) Capital gains, incomes or profits of persons other than companies, and

b) Documents or transaction by way of stamp duties; the National Assembly may subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a state or other authority of a state

D8 Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.[631]

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[628] See Constitution of the Federal Republic of Nigeria, 1999(as amended)

[629] See Personal Income Tax Act, (as amended by Act No. 20, 2011); Companies' Income Tax Act, No. 56, 2007 (as amended by Act No. 11, 2012); Capital Gains Tax Act, Cap. CI, Laws of the Federation of Nigeria, 2004; Petroleum Profits Tax Act, Cap. P13, Laws of the Federation of Nigeria, 2004; Customs and Excise Management Act, Cap. 84, Laws of Federation of Nigeria, 2004

[630] Item D7 Concurrent Legislative List, Part 11 Second Schedule, Constitution of the Federal Republic of Nigeria, 1999 as amended; OA Sanni,Division of Taxing powers under the 1999 Constitution, MODUS International law & Business Quarterly, Vol. 5, No.3, Sept., 2000, p.110

[631] Section 4(7)(b) Constitution of the Federal Republic of Nigeria, 1999 as amended

According to Okorodudu,[632] item D paragraphs 7 and 8 of the Constitution above merely empowers the Federal Government to delegate to the State Governments the exercise of an executive function of the collection of taxes specified therein. It does not envisage the delegation of any form of concurrent legislative function to the State Governments. He further states that the express wordings of the constitution demonstrate clearly that only the Federal Government can legislate with regard to the imposition, levy, collection and administration of any tax or duty envisage under item D paras. 7 and 8 of the Concurrent Legislatives List, and all that the State Governments are assigned thereby, are the responsibilities for the collection and administration of any tax or duty so imposed by an Act of the Federal Government.

Pursuant to the above provision of the constitution, Stamp Duties Act vested the State Government with power to collect stamp duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed by the Federal Government.[633] This position of the Stamp Duties Act is amended,[634] whereby section 89A of Stamp Duties Act is created.[635]

However, the Constitution vests the State House of Assembly with the power to make law for the collection of local government tax, fee or rate by the Local Government Council. Items D 9 and 10 Concurrent Legislative List, Second Schedule provides as follows:-

> *D9 a House of Assembly may, subject to such conditions as it may be prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a Local Government Council.*
>
> *D10 where a law of a House of Assembly provides for collection of tax, fee or rate or for the administration of such law by a Local Government Council in accordance with the provisions hereof, it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one Local Government Council.*[636]

The above provision of the Constitution clearly indicate that Local Government Council has no legislative power of its own and cannot impose any tax outside the enabling law of the State House of Assembly except those expressly provided by the Constitution.[24]

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[632] MT Okorodudu, Analysis of Federal and State Taxing Powers, In: Akanle, O., and Ajomo, M.A., (eds.) 'Tax Law and Tax Administration in Nigeria, Nigerian Institute of Advanced legal studies conference series No.1, NIALS, 1991, P. 147 @ p.65

[633] Section 4(2) Stamp Duties Act.

[634] Finance Act, 2021

[635] *Ibid*, section 27

[636] Part II, Second Schedule, Constitution of the Federal Republic of Nigeria, 1999 as amended

[24] See Fourth Schedule, Constitution of the Federal Republic of Nigeria, 1999 as amended

[25] *Ibid*, section 7(1)

3.1.3 Legislative Powers of the Local Government in relation to Taxation

The existence of Local Government is guaranteed in the Constitution and State Governments are mandated to ensure its existence.[25] Even the numbers of Local Governments in the Federation of Nigeria and the functions expected of the Local Government are mentioned in the Constitution.[637] In fact, Local Governments are required to participate in the economic planning and development within the area of territory of the local government area in a state upon which economic planning board must be established by the State House of Assembly.[638] Furthermore, the Constitution also mandated the National and State Houses of Assembly to make provisions for statutory allocation of public revenue to Local Government Councils in Nigeria.[639]

The above position of the Local Government Councils in the Nigerian Constitution raises the question as to whether local governments in Nigeria have independent power to impose taxes. On the conceptual analysis of Federal System of Nigeria as contained in the Constitution, Nigeria may be said to be a partnership between the Federal and State Government since the Constitution says Nigeria shall be a Federation consisting of States and a Federal Capital Territory.[640] More so, the only tiers of government in Nigeria with legislative powers under the Nigerian constitution are Federal and State governments.[641] On the area of tax under the Constitution, State House of Assembly must first enact the enabling law for the local government taxes which will determine the tax rate, taxable person, assessment procedure, method of collection and recovery of the tax before the said Local Government can exercise the power of collection of such tax rate within the limit of the prescribe law.[642] Further, the Constitution set out in the fourth schedule power of collection of some taxes as part of the function of the Local Government Councils in Nigeria.[643] Thus, any tax outside the enabling law and fourth schedule of the constitution collected by Local Government ultra vires its power.

3.2 Nature and Basis of Tax Jurisdiction in the Nigerian Federal System of Government

Nigeria's fiscal operations always adhere to the Federal System of Government. The government's fiscal authority is based on the three-tiers tax structure divided between the Federal, State and Local Governments, with the National Assembly and the State Houses of Legislature exercising their legislative (exclusive, concurrent and residual) powers to administer the relevant taxes falling under their respective jurisdictions. Under the Constitution, each tier of government has been granted powers and responsibility in respect of the imposition and collection of taxes.[644] Tax collection are carried out by the respective tax authorities for each tier of government; Federal Inland Revenue Service stands for the Federal Government, State Internal Revenue Service stands

[637] *Ibid*, sections 3(6), Second Column, Part I first schedule and section 7(5), fourth schedule
[638] *Ibid*, section 7(3)
[639] *Ibid*, section 7(6)a-b)
[640] *Ibid*, section 2(2)
[641] *Ibid*, section 4(1-7)
[642] *Ibid*, Paragraph D8 & 9 Second Schedule, Part II, Concurrent Legislative List
[643] *Ibid*, see list of local government taxes at fourth schedule
[644] schedules to the 1999 constitution of the Federal Republic of Nigeria (as amended 2011)

for State Government while Local Government Revenue Committee stands for Local Government.[645] Under current Nigerian Law, Taxes and Levies (approved list for collection) Act[646] provides a list of taxes that each tier of government can charge in Nigeria.

However, this legislation is nullified by the Court of Appeal for being inconsistent with the provisions of the Constitution, and consequently declared that any tax or levy contained therein is automatically unconstitutional, null and void-except such tax is expressly provided for in the Constitution or any other law validly enacted by a competent legislation.[647]

4.0 Legal Framework for Stamp Duties in Nigeria

Stamp Duties is one of such taxes that come under the Exclusive Legislative List in the 1999 Constitution which implies that only the Federal Government has the legislative competence on the subject matter. [648] The administration of the tax between individuals is left to the State Government. However, where Companies are involved; Federal Government has the administrative powers on such stamp duty involving companies.[649]It is against this background that the legal framework in Nigeria is stated as follows:-

4.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

This is the grundnorm of all the laws in Nigeria and supreme law of the land which has binding force on all authorities and persons throughout the Federal Republic of Nigeria, and in case of inconsistency, its provisions shall prevail.[650] Section 44(2)(a) of the 1999 Constitution provides as follows:-

44(2) nothing in subsection (1) of this section shall be construed as affecting any general law –

(a) For the imposition or enforcement of any tax, rate or duty;

Thus, the imposition, collection and enforcement of Stamp Duties Tax from citizens are not a derogation of right of citizens on their property which are fundamental and enforceable in the Court of law by virtue of Chapter IV of the Constitution. Section 4(2) (7) of the Constitution provides the powers of the National Assembly and States Houses of Assemblies to make legislation on the imposition, collection and enforcement of taxes and levies in Nigeria. The National Assembly were given exclusive legislative power to make law in respect of item 58 and 59 of exclusive legislative list, part 1 second schedule of the Constitution. Item 58 and 59 are Stamp Duties, Taxation of Incomes, profits and Capital Gains Tax. The collection of all these taxes may be delegated to the State by the National Assembly as provided by the Constitution.

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[645] See section 108 Personal Income Tax Act (as amended) by Act No. 20, 2011;Sec. 35 (1) (f) Tax Administration (Self-Assessment) Regulations, 2011

[646] Decree 1998 now Taxes and Levies (Approved List for Collection) Act, CAP T-2, Laws of the Federation of Nigeria ("LFN"), 2004

[647] See Uyo Local Government Council v Akwa Ibom State Government &Anor.(2020) LPELR-49691 (CA)

[648] ibid

[649] Section 4 Stamp Duties Act, cap. S8 Laws of the Federation of Nigeria, 2004, as Amended

[650] See section 1(1)(3) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Paragraph D7 part II Concurrent Legislative list provides that:-

> 7 in exercise of its powers to impose any tax or duty on:-
> (a) capital gains, income or profits of persons other than Companies; and
> (b) documents or transactions by way of Stamp Duties,[651]
>
> The National Assembly may, subject to such condition as it may prescribed, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.

This provision is simply confirming the delegation of power to collect such stated taxes as it's relate to individual to the government of a State by the National Assembly through legislation.[652]

4.2 Stamp Duties Act, Chapter S8, LFN, 2004[653]

The first law passed for the regulation of stamping of documents in Nigeria is the Stamp Duties Proclamation No.8, 1903. The Proclamation was to regulate the charging of Stamp duties on certain institution. In 1916, the Stamp Ordinance No.42, which substantially drew from Stamp Duties Proclamation 1903, was passed and made to apply to the Protectorate of Nigeria as well as the Colony of Lagos. There were other minor amendments to the Ordinance in 1922, 1928 and 1931. [654] The 1931 amendment repealed powers vested on the assistant treasurer, station magistrates, registrars and deputy registrars as Commissioners of Stamp Duties and in their stead appointed the deputy treasurer in addition to the Attorney General and Treasurer. The Stamp Ordinance was repealed by the passage of the Stamp Duties Ordinance No.5, 1939. This Ordinance is deemed to be an Act of the National Assembly and the current legislations regulating the administration of Stamp Duties in Nigeria. [655] The original theory of Stamp duties was that documents are to be Stamped as they are being prepared before execution, however, the Act modified the position as its provides that all instruments chargeable with Stamp Duty, may be stamp within Forty (40) days from the first execution thereof upon payment of the duty or unpaid duty except otherwise provided in any other law.[656] The law provides that:-

> Except where other express provision is made in this Act, any unstamped or insufficiently stamped instrument may be stamped with an impressed stamp at any time within forty days from the first execution thereof… upon payment of the duty or unpaid duty only but after that time the said instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira of interest on such duty, at the rate of ten percent per annum, from

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[651] See Second Schedule, part II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

[652] A Sanni, Division of Taxing Powers under the 1999 Constitution, pp. 3-4, available online at <www.legalpediaresources.com>last accessed on 28/06/2018 5:15pm

[653] As Amended by Finance Act, 2021

[654] Ordinance No. 41, 1922, Ordinance No. 43, 1928 and Ordinance No. 23, 1931 respectively

[655] OI Okauru, (ed.), Statutory Development, In: A Comprehensive Tax History of Nigeria, A publication of Federal Inland Revenue Service, Ibadan,2012, p. 247

[656] Section 23 Stamp Duties Act, Cap. S8 LFN, 2004

the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

Stamps representing the amount of the unpaid duty together with the penalty shall-

(a) In the case of impressed stamp, be impressed on the instrument, and

(b) In the case of adhesive stamps be affixed to the instrument.[657]

All duties chargeable under the Act are to be paid and denoted by impressed stamps, however where contrary is provided by any other law that the instrument may be denoted with adhesive stamp, it shall be sufficient to use postage stamp except otherwise provided under the Act.[658] Every instrument which by law is required to be stamped with an adhesive stamp, shall be stamped before its execution. And where this provision is violated, then such stamp shall be cancelled by the person by whom the instrument is first executed at the time of such execution or where the instrument is prepared or attested to before a commissioner of oaths, justice of the peace or notary public, such stamp shall be cancelled at the time of its first execution.[659] Adhesive stamp is such stamp that attract penalty where there is fraud in relation to it. The law provides that if any person-

(a) Fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for postal purpose adhesive stamp which has been so removed, with intent that the stamp be use again; or

(b) Sells or offers for sale, or utters any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid

Shall be guilty of an offence and liable on conviction in addition to any other fine or penalty to which he may be liable to a fine of one hundred naira.[660]

Statutory declaration or affidavit made in relation to stamp duties were required to be made before the commissioner or any other person authorized by law to administer oaths.[661] Two (2) types of duties were recognize: *ad valorem* and fixed duties. *Ad valorem* duties are duties whose sum increases with an increase in the value of the document evidencing the transaction, for example a company's share capital is subject to *ad valorem* duty of one naira for every 200 naira,[662] also documents such as Bills of exchange, mortgage and debenture loans & loan capital, promissory notes, property valuation, policy of life insurance etc. are all subject to ad valorem assessment

[657] *Ibid*, section 23(1-2)
[658] *Ibid*, section 5
[659] *Ibid*, section 12
[660] *Ibid*, section 13
[661] *Ibid*, section 18
[662] *Ibid*, section 100(2)

under stamp duties.[663] While fixed duties are flat and do not change irrespective of the value of the transaction, for example duty on admission as a barrister or notary public is fixed.[53] Some specific instruments require *ad valorem* duty to be chargeable upon them. Instruments such as bond, covenant, conveyance on sale or conveyances on transactions operating as voluntary dispositions *intervivos*, lease, mortgage bond, debenture, warrant of attorney to confess and enter up judgment and settlement.[664] The instruments that were charge with ad valorem duty are required to be properly stamp or the person in charge of such instrument shall be guilty of an offence and upon conviction liable to a fine of twenty naira and a penalty as prescribed by the law. Furthermore, except where any of such materials is written upon duly stamped materials, they shall be stamped with the proper *ad valorem* duty within thirty (30) days after first execution if they were executed in Nigeria and if executed outside, within thirty (30) days from the day received in Nigeria. The law provides as follows:-

In the case of such instruments chargeable with ad valorem duty, the following shall have effect(a) the instrument, unless it is written upon duly stamped materials, shall be duly stamped with the proper ad valorem duty before the expiration of thirty days after it is first executed, or after it has been first received in Nigeria if it was first executed at any place outside Nigeria;

(b) if any such instrument executed after the coming into operation of this Act has not been or is not duly stamped in conformity with the foregoing provision of this subsection, the person in that behalf specified in paragraph (c) of this subsection shall be guilty of an offence and liable on conviction to a fine of twenty naira and in addition to the penalty prescribed under subsection (1) and (2) on stamping the instrument there shall be paid a further penalty equivalent to the unpaid duty thereon, unless a reasonable excuse for the delay in stamping or the omission to stamp, or the insufficiency in stamp, is afforded to the satisfaction of the commissioner or of the court, arbitrator or referee before whom it is produced;[665]

The Act vest the administration of the Stamp Duties in respect of instrument involving companies and individuals of the Federal Capital territory (FCT) in the Federal Government while Stamp Duties in respect of instrument involving individuals in the State Government.[666] However, recently there was some amendment into the provisions of Stamp Duties Act, 2004,[667] whereby section 89A of Stamp Duties Act, was amended and subscribed to the Minister of Finance, enlarged powers to regulate, subject to the approval of the National Assembly, the imposition, administration, auditing, accounting, collection and remittance of Stamp Duties on electronic receipts in respect of instruments initiated and executed or transaction initiated and carried out

[663] *Ibid*, sections 39,80,84,95 and 102, AE Ogundele, Elements of Taxation, libri service ltd., Ibadan, 1996, p.251
[53]Okauru, *op. cit.,* note 44, 248
[664] Section 23(3)(c) Stamp Duties Act, cap. S8 LFN, 2004
[665] *Ibid*, section 23(3)(a-b)
[666] Section 4(1-2) Stamp Duties Act, Cap. S8 LFN, 2004
[667] Finance Act, 2021

between persons or individuals which by law, is accruable to the different States of the Federation, pursuant to section 4(2) of the Stamp Duties Act, 2004, as amended.[668] The law provides that:-

> *"The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the levy, including regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years, within 30 days of the date when this Act became effective:*
>
> *Provided that Electronic Money Transfer Levies subsequently collected shall be distributed within 30 days following the month of collection*"[669]

Pursuant to the above amendment of Stamp Duty Act, the Anambra State Government filed suit against Federal Government and its agencies to recover stamp duties on instruments accruable to state. In the case of *Anambra State Board of Internal Revenue Vs. Attorney General of the Federation & 2 Ors*.[670]; the Plaintiff asked the Federal High Court, Awka to determine if the above provision is not in conflict with the provisions of Sections 3(3), 111, 115 and 116(2) of the Stamp Duties Act, 2004, as amended; and whether it is not inconsistent with the provisions of Section 163 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, and therefore is null, void and of no effect whatsoever, to the extent of the inconsistency. Among other reliefs, it prayed the court for an order directing the Defendants to forthwith, instruct all Deposit Money Banks (DMBs) and financial institutions to start henceforth, to remit to the Plaintiff all Stamp Duties and Electronic Money Transfer Levies (EMTL) to be collected in respect of instruments initiated and executed or transactions initiated and carried out between persons or individuals (whether electronically done or otherwise) within the territory of Anambra State, pursuant to Section 4(2) of the Stamp Duties Act, 2004, as amended.[671] It also sought the order of the court mandating the Defendants, that all the arrears of Stamp Duties and Electronic Money Transfer Levy (EMTL) already remitted to them by Deposit Money Banks and Financial Institutions shall be distributed among the different States of the Federation on the basis of derivation, pursuant to section 163(b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended. It equally asked the court for a declaration that the purported directive of the 3rd Defendant (Federal Inland Revenue Service), in its press release on Clarification of Administration of Stamp Duties in Nigeria with regard to the administration, collection and/or remittances of Stamp Duties in Nigeria, to License Deposit Money Banks (DMBs) and other Financial Institutions in Nigeria, is unconstitutional, null, void and of no effect whatsoever. According to it, this is because the said directive of the 3rd Defendant (FIRS) seeks to the extent of interfering, has interfered and would continue to interfere with the powers and authority of the Plaintiff as enshrined in Section 4(2) Stamp Duties Act, CAP S8, LFN, 2004, as amended. The Plaintiff also urge the court to determine whether by the clear provisions

[668] *Ibid*, section 27
[669] *Ibid*, Part VI, section 27(3)
[670] Suit No. FHC/AWK/CS/03/2022
[671] <www.thisdaylive.com/index.php/2022>accessed on February 5, 2022 @5:44 am

of Section 163 Constitution of the Federal Republic of Nigeria, 1999 as amended, Stamp Duties are supposed to be paid, when applicable to the State from which they are derived and not for the benefit, inter alia, of the Federal and State Governments and Local Government Councils in each State on such terms as and in such manner as may be prescribed by the National Assembly pursuant to Section 162(3) Constitution of the Federal Republic of Nigeria, 1999 as amended.[672] It also asked the court to determine whether as currently constituted and administered, the said Constitution and Stamp Duties Act, did permit the infringement by the Federal Government through FIRS, into the area which, under the precise and well spelt out separation of powers enshrined in Section 4(1) and (2) Stamp Duties Act, 2004 as amended, are within the exclusive preserve of the various States of the Federation.[673]

While the above suit is still pending at the Federal High Court, recently there was further amendment to the said section 89A of Finance Act[674] and a new subsection (4) is created whereby read that:-

> "(4) *Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this section, shall, on the basis of derivation, be distributed as follows*-
>
> (a) 15% to the Federal Government and the Federal Capital Territory, Abuja;
>
> (b) 50% to the State Governments; and
>
> (c) 35% to the Local Governments."[675]

4.3 Nigerian Postal Services Act, Chapter N127, LFN, 2004 (NIPOST ACT)[676]

The Act vests in the NIPOST the exclusive power of conveying all letters from one place to another where postal communication have been established; performing all the incidental services of receiving, collecting, sending, dispatching and delivering written and printed matter, parcels and like materials, from anyone place to another, where postal communications shall have been established.[677] In addition, NIPOST provides various types of mailing services, collection and delivery of mails, provision of postage stamp and other evidence of payment of postages and fees, provision of philatelic services, as well as other miscellaneous services as may be authorized by the Federal Government, among other powers.[68]

The Act states that "in the exercise of its functions under this Act, the Postal Services shall have the following specific powers:

(c) to prescribe the amount of postage stamps and the manner in which it is to be paid

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[672] *Ibid*,

[673] *Ibid*, see the Plaintiff's Reliefs sought from the Court

[674] Finance Act, 2023

[675] *Ibid*, Part VIII, section 21 Stamp Duties Act, amending section 89A by creating subsection (4)

[676] As Amended by Nigerian Postal Service (Repeal and Re-enactment) Bill, 2021

[677] Section 1(2) Nigerian Postal Services Act, Chapter N127, LFN, 2004 as amended

[68] *Ibid*, sections 4 and 5

(d) to provide postage stamps and other stamped papers, cards and envelops and to provide such other evidence of payment of postage and fees as may be necessary or desirable."[678]

Relying on the above provision, the NIPOST has been collecting stamp duties in respect of all receipts, electronic transfers, and teller deposits on behalf of the Federal Government.

The NIPOST actions of stamp duties' collection led to controversy between NIPOST and FIRS regarding which of the Federal Government agencies is charged with responsibility to collect stamp duties on behalf of the Federal Government under the Stamp Duties Act.

This controversy has been the subject matter of disputes before the Courts[679] and in some cases received judicial pronouncements.[680]The directives issued by the Central Bank of Nigeria (CBN) on the Deposit Money Banks and other Financial Institutions to charge stamp duty of N50 in respect of electronic transfer and teller deposit from N,1000 and above and remit same to a NIPOST designated account deepened and re-visited the controversy between the two Federal Government agencies.[681]This led to serious conflict whereby the Director of Communications and Liaison Department, FIRS, Abdullahi Ismaila in a statement said the FIRS is the sole agency of government charged with the responsibility of assessing, collecting, and accounting for all tax types including stamp duties. Ismaila said the agency was determined to not only ensure that all monies collected by NIPOST into its illegally operated stamp duties account are fully remitted into the Federation Account, but also make sure that any kobo not accounted for in that account is legally recovered.[682]On the part of NIPOST, it submitted that the CBN circular derives its validity from the Stamp Duties Act which has been in operation since 1939, also Government Financial Regulations, 2009 and a documentary evidence of NIPOST Vehicle brought in 1982 which indicated that stamp duty was collected by the Postal Service as the custodian of stamp and the stamping protocol.[683]

Following the above development, there was a bill that seeks to amend the provision of the NIPOST Act,[684] which provides thus:

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[678] *Ibid*, section 5(c) and (d)

[679] See Retail Supermarket Nigeria Limited vs. Nigerian Postal Services & 3 Others – Suit No: FHC/L/CS/547/16

[680] See Standard Chartered Bank vs. Kasmal International Services Limited – Appeal No: SC/524/2016 judgment delivered on April 21, 2016; see also Retail Supermarkets Nigeria Limited vs. Citibank Nigeria Limited and Central Bank of Nigeria - Suit No: FHC/L/CS/126/2016 Judgment delivered on March 13, 2017.

[681] See CBN circular: CBN/GEN/DMB/02/006- Collection and Remittance of Statutory Charges on Receipts to Nigerian Postal Service under the Stamp Duties Act dated 15th January, 2016

[682] Available online at <www.cdn.ampproject.org>accessed on 11th June, 2023 @ 1:30pm

[683] A Oluseyi, NIPOST regains power to collect stamp duty after years of dispute with FIRS, available online at <www.the-cable.ng>accessed on 11th March, 2021 @ 1:30pm

[684] The Nigerian Postal Service (Repeal and Re-enactment) Bill, 2021 available online at <www.nairametrics.com> accessed on 2nd June, 2023 @2:20pm

> "(1*) there is hereby established a body to be known as the Nigerian Postal Service (hereby designated as the Public Postal Operator) which (a) shall be a body corporate with perpetual succession and a common seal…*
>
> *(2) the postal operator shall be charged with the responsibility of providing Universal Postal Service in Nigeria*
>
> *(3) In carrying out its Universal Postal Service obligations, the provision of any enactment, law or regulation relating to taxation of companies, agencies or trusts funds shall not apply to the Public Postal operators save for its obligation as a collecting agent of Government."*[685]

The above amended Act does not specifically mention which of the Federal Government agency is authorize to collect stamp duties on behalf of government, and in fact, it referred one of the NIPOST's obligations as a collecting agent of government.

4.4 Federal Inland Revenue Service (Establishment) Act, 2007

Prior to this Act, the body responsible for tax administration of the Federal Government was the Federal Board of Internal Revenue (FBIR) as established by section 1(1) of the Companies Income Tax Act 1979. The Federal Inland Revenue Service (FIRS) was the operational arm of the Board. However, with the enactment of FIRSEA in 2007, Federal Inland Revenue Service has become a body corporate established by law as the Federal Inland Revenue Service.[686]The objective of the Service, as the regulating body, is to control and administer the different taxes and laws in the schedule to Federal Inland Revenue Service (Establishment) Act, and to account for all taxes collected.[687] The list of tax legislations expected to be administered by the Service are listed as follows:

1. Companies Income Tax Act Cap. 60, LFN, 1990
2. Petroleum Profits Tax Act Cap. 354 LFN, 1990
3. Personal Income Tax Act No. 104, 1993
4. Capital Gains Tax Act Cap. 42, LFN, 1990
5. Value Added Tax Act No. 102, 1993
6. Stamp Duty Act Cap. 411 LFN, 1990 etc.[688]

The Act further empowers the FIRS to assess, collect, account and enforce payment of taxes due to the Federal Government.[689] Tax includes any duty, levy or revenue accruable to the government in full or in part from any of the tax legislations listed above or any other enactment.[690]

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[685] *Ibid*, section 2(1-3)
[686] Section 1(1) Federal Inland Revenue (Establishment) Act, No. 13, 2007
[687] *Ibid*, section 2 and 25(1)
[688] *Ibid*, First Schedule to the Act
[689] *Ibid*, section 8
[690] *Ibid*, section 69

5.0 Consequences of Non-Observance of True Fiscal Federalism

As we have seen above, non-observance of true fiscal federalism by the tiers of government will lead to serious conflict and even in-evitable one when issue of revenue collection is involved. The dispute between Federal Government and Anambra State Government on the power of collection of Stamp Duties on electronic receipt cited above is one of the examples. Moreover, the conflict will exist even within the same tier of government on its agencies like the case between FIRS and NIPOST cited above. So, in order to avoid all these inevitable conflicts that may arise when there is no observance of true fiscal federalism among the tiers of government which is very fundamental because it stated that every tier of government and it agencies must observe its limit of power particularly when issue of revenue collection and administration is involved. Therefore, consequences for non-observance may be as follows:

5.1 The consequences of non-observance of fiscal federalism would lead to so many ambiguities in the existing laws in the federal system. For example, in order to resolve conflict between FIRS and NIPOST on the issue of collection of Stamp duties, the Federal Government amended the NIPOST Act and state that in carrying out its Universal Postal Service obligations, the provision of any enactment, law or regulation relating to taxation of companies, agencies or trusts funds shall not apply to the Public Postal operators save for its obligation as a collecting agent of Government.[691] However, the amendment did not states anywhere that the NIPOST agency cannot collect Stamp duties; and in fact, the amendment even allows as part of the NIPOST obligation a collecting agent of Government. This might also give room for another conflict between the agencies of government in charge of stamp duties collection.

The above position is even more complicated when considering the provision of FIRSEA,[692]which vested the power of collection of all listed taxes to FIRS, including the Stamp Duties but other law of another agency under the same tier of government empowered the agency to function as a collecting agent of the same government over stamp duties.

5.2 Furthermore, even the recently amended Stamp Duties Act, 2004,[693] whereby section 89A of Stamp Duties Act, was amended and subscribed to the Minister of Finance, which enlarged powers to regulate the imposition, administration, auditing, accounting, collection and remittance of Stamp Duties on electronic receipts in respect of instruments initiated and executed or transaction initiated and carried out between persons or individuals. This stamp duties transaction is accruable to the different States of the Federation pursuant to section 4(2) of the Stamp Duties Act, 2004 but now made subject to regulation by the Minister.[694]Therefore, it has created serious conflict between the Federal and State Governments in Nigeria and even between the Federal Government agencies as it did not specifically mention FIRS as the only collecting agent of Stamp duties for the Federal Government under the amendment.

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[691] *Ibid*, section 2(1-3)
[692] See First Schedule Federal Inland Revenue (Establishment) Act, No. 13, 2007
[693] Finance Act, 2021
[694] *Ibid*, section 27

6.0 Conclusion and Recommendation

6.1 It is observed that in a federal system of government, non-observance of true fiscal federalism on the imposition and collection power of Stamp duties would lead to in-evitable conflict between the tiers of government as well as within the same tier on its agencies.

6.2 It is also observed that this in-evitable conflict between the tiers of government and sometimes government agencies would result to endless and serious litigation in courts which have adverse effect on the generation of revenue for government whereby taxpayers use litigation as a ground not to pay tax as at when due.

Following the above observation, it is hereby recommends for total amendment of all statutory provisions of our laws relating to Stamp Duties and to come up with a unified law that would observed true fiscal federalism on the power of collection of stamp duties by the tiers of government in Nigeria and their agencies.

In conclusion, it is submitted that stamp duties is one of the viable source of revenue for government which can contribute to increase the Internally Generated Revenue (IGR) of government particularly with the dwindling sources of revenue of government in Nigeria but the consequences of the non-observance of true fiscal federalism in the provision of the laws and the collection power between the tiers of government and its agencies might not allow the realization of the viability of the revenue.