CRITIQUE OF COMPANY INCOME TAX ACT AND ITS IMPACT ON INVESTMENTS IN NIGERIA [*]

Abstract

The political, economic and social development of any country depends on the amount of revenue generated for the provision of the common needs of people in any given country. Taxes and investments are among the major sources of revenue generation and wealth creation in Nigeria. The problem with combining taxation and investment as sources of revenue generation is that, an inverse relationship exists between them, with the implication that an increase in taxation leads to a decrease in investments, which will in turn result to a poor growth of the economy. Due to the over-reaching socio-economic benefits of taxation, Nigeria like many other countries, have unduly over-stretched their tax revenue pursuit, to a worrisome point of making taxes an impediment to the growth of other sources of revenue such as investments. Though, the Finance Act introduced some changes to the Companies Income Tax Act and other taxing statutes in a bid reform domestic tax law to align with global best practice, introduce tax incentives for investment in infrastructure and capital markets to avoid tax domination of investments, this article therefore criticizes the Company Income Tax Act and its negative effects on investments in Nigeria, with a view to pointing out provisions that are capable of impeding investments in Nigeria.

Keywords: "Companies", "Income", "Profits", "Tax", "Investments".

1 Introduction

The political, economic and social development of any country depends on the amount of revenue generated for the provision of the common needs of people in any given country.[1]

Taxes and investments are among the major ways of improving revenue generation and wealth creation in Nigeria. This is because, if both means are successfully harmonized, they are sustainable sources of government revenue which neither fluctuate in price nor susceptible to finish like the crude oil source of revenue. Taxation has become one of the most reliable answers to the cry for a sustainable growth and diversification of Nigerian economy, as a result of its significant huge contribution to revenue generation.[2] Apart from revenue generation, taxation is also an economic and social control tool, used in shaping and influencing individual and economic activities, such as consumption, income redistribution, fiscal regulation, investments etc.[3] Due to the over-reaching socio-economic benefits of taxation, Nigeria like many other countries, have unduly over-stretched their tax revenue pursuit, often to a worrisome point of

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[1] E G Ekpung, and W W Okoi, 'The Impact of Taxation on Investment and Economic Development in Nigeria', [July 2014] *Academic Journal of Interdisciplinary Studies, (Vol. III)*, pp. 209-218.

[2] See. National Tax Policy, Federal Ministry of Finance (April 2012), page 3, available at <https://www.firs.gov.ng.> Accessed on June 12, 2020.

[3] AI Ipaye, *Nigerian Tax Law and Administration: A Critical Review* (London, United Kingdom: ASCO Prime Publications Ltd. 2014), p.6.

making taxes an impediment to the growth of other sources of revenue generation, such as investments.

With the above in mind, it would appear that the right approach towards growing a sustainable economy in Nigeria is to strike a balance between the implementation of tax policies and that of investments. This balance will be best achieved by ensuring that, those provisions of Nigerian tax laws and administration which dominate and impede investments are adjusted while those aspects of corporate tax practices which encourage investments should be adopted, promoted and brought to the awareness of prospective investors. In other words, all forms of tax related logjams which slow the growth rate of investments should be removed.

This paper criticizes the extent to which some provisions of Company Income Tax Act as a tax statute affects investments in Nigeria. Thus, to suggest a balance between taxation and investment because, both economic tools are inevitably required for the purpose of attaining the common goal of improving Nigerian economy.

2 Companies Income Tax Act[4]

Company's Income Tax Act (CITA) is the principal statute imposing taxes on non-petroleum companies in Nigeria[5].

2.1 Repeal of Part 1of 1961 Act.

The first noticeable feature of CITA is the repeal of PART 1 of the 1961 Act (the Principal Act),[6]which formerly provided for the establishment, composition and powers of the Federal Board of Inland Revenue.[7]According to Abiola Sani, the effect of this amendment is that, the establishment of FIRS and other provisions relating to the enforcement of CITA were contained under a separate statute in line with the demand for a strong and efficient administrative framework.[8]This structure which separated the substantive provisions of CITA from its administrative provisions makes for easy reference by administrators, practitioners, investors and researchers.[9]

Among the changes introduced by the amendment in 2007, is the increase in pre-operational levy.[10]Section 29(4) of the 1961 Act, provides that a pre-operational levy of NGN 500 for the first year and NGN 400 for every subsequent year is payable by companies that have failed to commence business after six months of incorporation. The amendment in 2007 increased the pre-operational levy to NGN 20,000 and NGN 25,000 for the first and second year respectively.[11]The rationale for this provision, let alone the increase in the pre-operational levy seems unclear as company income tax is generally payable on profits of companies. In addition, there may be a genuine delay for a company not to commence business within the first six

[4] Cap C21, Laws of the Federation of Nigeria, 2004.

[5] However, Petroleum operations companies engaged in transportation are taxed under CITA Section 14 of Petroleum Profits Tax Act excluded oil companies engaged in transportation from being taxed under it (PPTA).

[6] That is Company's Income Tax Act of 1961.

[7] These provisions are now contained in the Federal Inland Revenue Service (Establishment) Act, 2007.

[8] A Sani; 'Recent Developments in Company Income Taxation in Nigeria' *Bulletin for International Taxation, 2011 (vol. 65) No. 1* page 3.

[9] *ibid.*

[10] Pre-Operational levy is a levy imposed on companies that are yet to commence business six months after incorporation.

[11] Company Income Tax Act, Section 11 of the 2007 Act.

months of incorporation.[12] Undoubtedly, a company which has not commenced business has made no profit[13]. In other words, pre-operational levy is a charge on the capital of the company, hence taxing a company's capital amounts to killing the goose that lays the golden egg.[14] This is an excessive pursuit of revenue generation which will definitely impede investments.[15]

2 Finance Act of 2019

Nigeria's domestic revenue mobilization has been one of the lowest in the world. This has had a severely limiting impact on economic growth and creation of an enabling framework for investments, hence this has necessitated the enactment of the Finance Act. The Finance Act amended various provisions of the tax laws ranging from Companies Income Tax Act, Value Added Tax Act, Capital Gains Tax Act, Personal Income Tax Act, Stamp Duties Tax Act, Petroleum Profit Tax Act, to Customs and Excise Tariff, Etc. (Consolidation) Act. Though, the Companies Income Tax Act is the focus of this paper. The amendment of CITA by the Finance Act introduced the following changes;

Digital and Service Permanent Establishment; the Finance Act modifies the provisions of Section 13 of CITA to create a nexus for the taxation of income earned by foreign companied from technical, management, consultancy or professional services that are remotely provided to a person resident in Nigeria. The tax payable by such foreign companies will be limited to the Withholding Tax (WHT) deducted from them on such payments. The Finance Act also introduces provisions to tax any foreign company that emits or receives signals, sounds messages, images, or data of any kind from cable, radio, electromagnetic systems or any wireless apparatus to Nigeria in respect of any activity including electronic commerce application store, online adverts, participative network platform, online payments and so on, to the extent the that the company has significant economic presence in Nigeria and profit can be attributable to such activity. The Finance Act did not define what constitutes "significant economic presence," but empowers the Minister of Finance to define the term.

Prior to the enactment of Finance Act, the generally applicable CIT rate in Nigeria was 30% of taxable profits. However, manufacturing and agricultural business in their first 5-7 years of operation were allowed to pay tax at a reduced rate of 20%. Incidentally, this incentive did not apply to start-ups, Small Enterprises (SEs) and Medium sized Companies (MSCs). Nonetheless, the Finance Act introduces a new progressive CIT rate regime, where SEs with annual gross turnover of not more than #25 million would be completely exempted from paying CIT subject to some conditions. Whereas Medium sized and Large sized companies are to be taxed at the rate of 20% and 30% respectively. These among others are some of the amendments of CITA in the Finance Act, also, to be considered are the provisions of CITA that affects investment.

3 Critique of the Provisions of CITA Affecting Investments

Some of the provisions to be considered here will include the following;

[12] See footnote 6 above. Also, A I Ayua, *The Nigerian Tax Law*, (Ibadan: Spectrum Law Publishing, 1991) Page 76.
[13] *ibid*
[14] *ibid*
[15] The pre-operational levy is better contained in the Provisions of CAMA, which regulate incorporation and registration of companies. Such provision if contained in CAMA, will discourage the practice of "Shelf companies". "Shelf Company" is a "paper company" duly incorporated by a person who do not intend to do business, but to sale it to anyone who wants to bypass the lengthy incorporation process.

A community reading of *Section 9 and Section 40(1) of CITA* imposed the rate of 20 percent and 30 percent as tax for medium-sized and large companies respectively on the profits accruing in, derived from, brought into, or received in Nigeria in respect of

i. A trade or business,
ii. rent or premium,
iii. Dividends, interest, discounts, annuities etc,
iv. Profits from dealing in securities,
v. Deemed profits,
vi. Service fees, dues and allowances or
vii. Omnibus profits.[16]

Section 9 of CITA is detailed and it gives rise to a number of crucial points and issues.
The first point under section 9 is that, taxes are imposed on both Nigerian and foreign companies. This is justified by the use of the phrase "any company".

The second point is that, generally taxes are imposed only on the profits of companies and not on capital. This is in line with good tax policy and to do otherwise will amount to killing the goose that lays the golden eggs.[17]

For two reasons, not all profits of a company are taxable. First, Section 9 of CITA provides for, four key qualifications used in determining when a company's profits are taxable in Nigeria.[18]Secondly, Section 23 and other provisions of CITA exempted certain profits, inclusive of those from small companies from being taxed in Nigeria.

By virtue of *Section 13(1) (a) of CITA* all profits of a Nigerian company are deemed to accrue in Nigeria irrespective of where they are derived from.[19]The implication of this provision is that a Nigerian company is chargeable to tax on its world-wide profits or income irrespective of where they are made. But for a foreign company, only the profit accruing to it or derived by it, from or taxable in Nigeria that is chargeable to Nigerian tax. This is because *Section 13(2) of CITA* in imposing taxes on the profits of foreign companies employed the words "derived from or taxable in Nigeria".[20]

The court in interpreting Section 13 of CITA in the case of *Addax Petroleum Services Ltd v. Federal Inland Revenue Service*[21] stated that a foreign company is taxed on profits attributable to its fixed base in Nigeria. To strengthen the above fact, [22]*Section 23 (1) (j) of CITA*, expressly exempted the profits of a foreign company brought into or received in Nigeria from being taxed.

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[16]Finance Act, 2019, sections 2 &16. Omnibus profits refer to any other profit not falling under any of the above listed heads of profits.
17Ayua (n 12) 76.
[18]The four qualifications are that, for a profit of a company to be taxed in Nigeria, it must have accrued, derived, brought into or received in Nigeria.
[19] CITA, s 105 defined Nigerian Company as Company incorporated under CAMA. CAMA is an abbreviation for Companies and Allied Matters Act.
[20] Finance Act, 2019, s 4. Also, the principle of Interpretation of tax statutes is that the strict literal meaning of the statute should be followed and nothing should be implied – see Cape *Brandy Syndicate v. IRC.*
[21]2013 9 TLRN Appeal No. TAT/L2/OIE/2011.p 129.
[22] That is, the fact that only the profit of a foreign company derived from or taxable in Nigeria that is subject to Nigerian Tax.

A Combined reading of *Section 13(2) and Section 23(1)(j) of CITA* is an incentive for foreign investments, in that, foreign companies are permitted to bring in their profits made outside Nigeria, to possibly re-invest in Nigeria.

Another material point under *Section 9 of CITA* which affects investments is the sources of profits that are taxable in Nigeria. Dividends and interest are among the sources of profits taxable under *Section 9 of CITA.*[23] Further provisions of CITA relating to dividends blow hot and cold towards investments. In other words, the provisions in question, promote investments on the one hand, and discourage investments on the other hand. With respect to dividends *Sections 19 and 20 of CITA* both discourage and encourage investments respectively.

Section 19 of CITA, provides that where a dividend is paid out as profits on which tax is payable due to;

a. No total profits, or

b. Total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company, is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in Subsection (1) of Section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

In my view, the simplest construction of this section is that, at no time should the total profits of a company in a year of assessment be less than the aggregate amount of dividends paid to shareholders. And if otherwise, the FIRS should disregard the profit declared by the company and treat the aggregate amount of the dividends as the total profit and tax it at the rate of 30 percent. This will also apply, where the company made no profit in a current year, but decides to pay dividends from profits retained in previous years. The FIRS will tax such retained dividends irrespective of the fact that such profits had been taxed in the year it was made.

The particulars of anti-investments implications of the provisions of *Section 19 of CITA* are as follows:

(1) It impedes reserves and capitalization of companies' profits: According to Orojo[24]"A company will normally not want to distribute all of its profits, but rather, would want to reserve or retain part of it to provide for current or future liabilities or provide for reserves for a "rainy day" or some other future purposes."

In line with the need for a company to retain part of its profits, *Section 383 (1) of CAMA*[25] provides that, the directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit, and the directors may also without placing the same to reserve, carry forward profits which they may think prudent not to distribute.

[23] Companies Income Tax Act.

[24] O Orojo, *Company Law and Practice in Nigeria*, Fifth edition, (London, United Kingdom: Lexis Nexus Butherworths Tolley, WC2A. 2008) p 328.

[25] Cap C20 Laws of the Federation of Nigeria, 2004

The summary of this provision is that, a company can retain or capitalize part of its profits made in a particular year in order to employ it in the business of the company, invest it in other companies or distribute the profits in subsequent years if the directors of the company deem it necessary to do so.

If for instance, a company retains part of its profits made in 2015, for the purpose of re-investment or to meet up with a contingent liability or to distribute it in any year in which little or no profit was made. If peradventure the company decides not to invest further or the event upon which the liability of the company was based failed to happen, then, the company is left with the option of distributing the retained profits in the year 2016. The implication of Section 19 of CITA is that, the retained profit which was taxed at the rate of 30 percent in 2015 will be subsequently taxed again at the rate of 30 percent in 2016 which is the year of its distribution. Such profit will be taxed at the rate of 60 percent.

The above scenario is a typical example of the hardship imposed on Oando Company in the case of *Oando Plc v. FIRS*[26]**.**In that case, *Oando Plc* (the appellant) paid dividends in excess of its taxable profits in 2005, 2006 and 2007 tax year. The dividends were paid out of the company's retained earnings, which had been subjected to companies' income tax (CIT) in previous years but were not distributed to shareholders in the year in which they were made. The FIRS assessed the appellant to additional CIT for the relevant tax year based on *Section 19 of CITA*. The Tax Appeal Tribunal ruled in favour of FIRS and the appellant objected. On appeal one of the issues submitted for determination was whether the provisions of *Section 19 of CITA* could be applied to subject dividends, paid out of retained earnings which had been subjected to tax in prior years, to further tax.

The Federal High Court held that "Section 19 of CITA" "would be applicable whenever the dividend paid out by a company in a tax year exceeded the total profit for that year, regardless of the source of the dividend paid. The court added that, there is nothing in *Section 19 of CITA* mandating the tax exemption of such earnings. The decision of the court in this case, is another way of saying that companies in Nigeria should not retain or reserve profits and if it does such profits will be taxed at the rate of 60 percent in the year in which it will be distributed. In other words, companies are indirectly forced to distribute their total profits and not save for the rainy day.

The second anti-investment implication of *Section 19 of CITA* is that companies face the risk of being wound up. The inevitable consequence of *Section 19 of CITA* and the decision of the court in the case of *Oando Plc v. FIRS* is that companies are discouraged to save or retain part of their profits for the fear of being taxed twice. However, by the virtue of new *Finance Act of 2019*, which amended *Section 19 of CITA*, by inserting a new subsection (2), which among others include;

> That provisions of subsection (1) shall not apply to:
>
> (a) dividends paid out of the retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under this Act, the Petroleum Profits Tax Act, or the Capital Gains Tax Act;
>
> (b) dividends paid out of profits that are exempted from income tax by provision of this Act, the Industrial Development (Income Tax Relief) Act, the Petroleum Profits, or Capital Gains Tax Act or any other legislation;

[26] Appeal NO. TAT/L2/CIT/076/2014.

(c) profits or income of a company that are regarded as franked investment income under this Act; and

(d) distributions made by a real estate management company to its shareholders from rental income and dividend income received on behalf of those shareholders,

From the foregoing, notwithstanding that profits payable as dividends are taxable, but Subsection (2) modified the said provision by providing for the above exceptions. The first exception as listed above, have whittled down the implication of *Oando's* case as dividends paid out of the retained earnings which have been subjected previously to CITA or other taxes are no longer chargeable to tax. Thus, the exemption provided in this section is applicable even where the profits that generated such dividend accrued in a year other than the year which the dividend was paid.

Further, *Section 24 of CITA* provided for allowable deductions, the underlying principle for tax-deductibility of expenses in Nigeria is that such expenses must have been wholly, exclusively, necessarily and reasonably incurred for the purpose of the business. The Finance Act does not introduce any fundamental changes to this principle. However, it modifies the way the rules are applied with the intention of closing loopholes in the application of expense deductibility rules. By this amendment, deductions will be allowed only for expenses incurred wholly, exclusively, necessarily and reasonably in the production of profits chargeable to tax. As such, expenses incurred in generating profits not chargeable to tax (such as exempt income, franked investment, etc.) will not be allowed as deduction against profits chargeable to tax.

It is pertinent to note that *Section 24(a)*, introduced a restriction on deductibility of interest for a Nigerian company or a fixed base of a foreign company in Nigeria that has incurred any interest or deduction of similar nature where loans or debts are obtained from a foreign connected person. Thus, where a Nigerian company or a fixed base of a foreign company in Nigeria has incurred such interest or deduction of a similar nature, the deduction allowed under this Section shall be restricted to only 30% of the company's earnings before interest, tax, depreciation and amortization (EBITDA).

From the foregoing, the Finance Act in a bid to address the expense deductibility rules, the introduction of EBITDA will in turn increase the corporate liability of these companies which will have a devastating effect on investments. In addition, *Section 30 of CITA*, empowers the Board to tax a company based on turn-over, if in the opinion of the Board, a company declared profits less than expected. This provisions will perfectly take care of any falsification of profits by companies. Therefore, section 19 of CITA is a mere surplus age and a hardship which may relatively impedes investments. The other provision relating to dividends which encourage investment[27] is *Section 20(a) of CITA.*

In summary, it provides that, if a foreign company which has no other trade or business in Nigeria is paid dividend, no tax shall be charged on it apart from the tax withheld under *Section 80 of the Act.* Section 80 provides that, deduction of tax from dividends shall be at the rate of 10 percent. This is a fertile ground for foreign investors, in that, if foreign companies invest in

[27]Especially foreign investments.

securities in Nigeria, their profits will be taxed at the rate of 10 percent instead of 30 percent. This should indeed attract any informed foreign investor to invest in Nigeria.[28]

Then finally, another issue arising from the provision of *Section 9 of CITA*, is the conflicting policy between it and *Section 54 of CAMA*. The conflicting policy of these two sections is that, while *Section 54 of CAMA* is trying to regulate the activities of foreign companies in Nigeria by insisting that they must be incorporated so as to prevent any activity which may be harmful to the society at large, *Section 9 of CITA* is revenue oriented and seeks to generate more revenue by imposing taxes on foreign companies irrespective of their activities or whether they are incorporated.[29]

In summary, subject to the exceptions provided in Sections 56 to 59 of CAMA,[30] Section 54 provides that "…any foreign company … having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business in Nigeria". Failure to comply with this statutory requirement attracts both private and penal consequences.[31]First, any act of a defaulting foreign company in Nigeria is void.[32] Secondly, such a company and its officers or agents who knowingly and willfully authorized or permitted the default shall be guilty of an offence.[33]

Contrary to this unambiguous mandatory requirement of CAMA**,** *Section 9 of CITA* permits foreign companies to have fix base and carry on business in Nigeria without being incorporated. Voluntary compliance of foreign companies to the provisions of CAMA is made more difficult by the provisions of Section 105 of CITA because, once a foreign company is incorporated under CAMA, it becomes a Nigerian company and therefore taxable on its worldwide income, and also disqualified from enjoying other privileges that foreign companies are entitled to under CITA.[34]

The problem is that under *Section 105 of CITA*, foreign company is distinguished from Nigerian company on the basis of incorporation. While Nigerian companies are companies incorporated under CAMA, Foreign Companies are companies incorporated under any law in force in any other country outside Nigeria.[35]This distinction is critical in that, while foreign companies are taxable only on their profits attributable to its fixed base in Nigeria,[36] Nigerian companies are taxable on their worldwide income.[37]

[28] The only conceivable challenge to this provision is the limited number of double taxation treaties that Nigeria has. If a company from a country which has no double taxation treaty with Nigeria should invest in such securities, the profit of such company will be taxed twice. First in Nigeria, and secondly in its own country.

[29] D C John; 'Corporate Taxation in Nigeria: A Review*', International Journal of Advanced legal Studies, vol. 11*. (2001). No.1 p 239.

[30] The exceptions provided under these sections relates to exemption of foreign companies from being incorporated in Nigeria for the purpose of executing certain contracts.

[31] N Ikeyi; '*Shell International Petroleum Matschappij BV v. FBIR*: What Other Implication for Technical/Management Service Transactions in Nigeria?' *I. E. L. T.R. ISSUE 7, Sweet & Maxwell Limited and Contributors, 2004 page 157*

[32] CAMA 2004, s 54(2).

[33] *ibid*, s 55.

[34] Some of the privileges enjoyed by Foreign Companies under CITA includes (a) privilege of brining profits made outside Nigeria into Nigeria without being taxed. CITA, s 23(1) (b) privilege to invest in securities in Nigeria to be taxed at the rate of 10 percent section 20(a) of CITA etc. Nigerian companies cannot enjoy these privileges.

[35] CITA, s 105.

[36] CITA, s 13(2).

37 *ibid*.

In practice foreign companies try to circumvent these consequences of incorporation by using the facilities of Nigerian Companies to execute their contracts in Nigeria. An example of such arrangement is what occurred between Shell International Petroleum Maatschappij, BV and Shell Production and Development Company of Nigeria Limited which gave birth to the case of *Shell International Petroleum Maatschappij BV v. FBIR.*[38] From the above analysis, foreign companies will not willingly incorporate under CAMA in order not to be treated equally with Nigerian companies for tax purposes. A writer has justified taxation of foreign companies that are doing business in Nigeria without being incorporated, even when such business is deemed to be illegal for not complying with *Section 54 of CAMA.*[39]

Furthermore, it has been argued that, *Section 54 of CAMA* should be deleted, for introducing confusion in the tax treatment of foreign companies in Nigeria.[40] The reason for the above suggestion is that, the origin of *Section 54 of CAMA* in Nigeria is the Companies Act of 1968. It would seem to have been driven by the predominant ideology of the era which is economic nationalism, part of this thinking was to subject foreign companies operating in Nigeria to tax in Nigeria on the same basis as Nigerian companies.[41] The view that *Section 54 of CAMA* should be deleted added that, the ideology of economic nationalism is largely spent in today's world; effective taxation of foreign companies operating in Nigeria does not necessarily require the indigenization of such companies. Local incorporation is not a requirement of doing business in many other countries.[42]The issue of incorporation of a company is imperative in determining whether or not the company is a Nigerian or Foreign Company for tax treatment purposes.

It is worthy of note that *Section 105 of CITA* provides that "foreign company means any company or corporation established by or under any law in force in any territory or country outside Nigeria". While section *567 of CAMA* provides that, "foreign company" means a company incorporated elsewhere than in Nigeria." From the above provisions; it is clear that both statutes are in agreement that a foreign company was first incorporated under the law of another country. CITA went further to define Nigerian company as any company incorporated under CAMA.[43]CAMA did not define Nigerian company, but rather required that every foreign company must be incorporated under it (CAMA) before it could legally carry on business in Nigeria.[44]The implication is that, if a foreign company complies with the *Section 54 of CAMA*, it becomes a Nigerian company by the definition of *Section 105 of CITA.*

4. Conclusion

In line with the above view, I suggest that, there should be a total reform in the existing Nigerian tax system. And during the reform, amendment of statutes should be given special attention. Below are some specific matters, we feel should be reflected in the amendment.

[38] In this case, Shell International was using the facilities of Shell Nigeria to provide technical services to the Nigerian company. It was held that Shell international has a fixed base in Nigeria for the purpose of taxation.

[39]C.Odoemenam,"Taxation-of-Foreign-companies-in-Nigeria",available-at http://www.legalnaija.com/2015/12/taxation-of-foreign-companies-in-html?m-l. Last accessed at 27 June 2020.

[40] N Ikeyi, *op. cit* at . *157.*

[41]*ibid*.

[42]*ibid,* N Ikeyi further referred to the work of Ogowewo, "The Shift from the Classical Theory of Foreign Investment: Opening up the Nigerian Market" (1995) 44) C.L.R 915 at 924, 925. For a fairy detailed argument against s. 54.

[43] *ibid*.

[44] CAMA 2004,s 54.

Reduction of the corporate tax rate to encourage investments. This because, the average corporate tax rate is at 20 or 30 percent. The implication is that if individuals invest in securities, their profits would be first taxed at 20 or 30 percent under CITA. This is a bit high considering the fact that, they pay VAT on their consumptions, Education Tax, Police Trust Fund, etc.

It is also suggested that corporate tax rate should be taxed progressively. Progressive tax is a taxing formula whereby tax payers are charged to tax not on a flat rate but on the basis of their earnings. This is the PAYE taxing formula applicable to personal income tax. The justification of this suggestion is that, it is believed that companies which make much profits exact more burden on the social amenities and infrastructures. Therefore, they should be made to pay more.

In addition, this formula will encourage the growth of medium companies which may not be attainable if they were to be taxed at the same rate with big companies.[45]

There should be an increase in the number of double taxation agreements between Nigeria and other countries. For instance the United Kingdom has double taxation agreements with 125 countries, while Nigeria has only 13 double taxation agreement with other countries.[46]An increase in Nigerian double taxation agreements will attract many other countries to invest in Nigeria.

Simplifying the provisions of Nigerian tax laws. At all cost, Nigerian company income tax statute should be made simple. This will enhance understanding and reduce the number of conflicts which usually arise as a result of differences between the taxpayers and tax authorities in the computation of tax due.

Finally, the reform should also focus on administrative issues, such as

i. Training experts to be involved in the enforcement of tax laws
ii. Massive tax education and enlightenment mechanism should be put in place.
iii. ICT based tax system.
iv. Closing the leakages, so as to ensure that revenue generated are well utilized to provide infrastructures. This will help in building the confidence of tax payers in the system, which will indirectly improve compliance.

It is my firm believe that, if all the above suggestions are implemented, there will be a balance between taxation and investments in Nigeria, which will in turn increase the level of investments and also increase the rate of revenue generated in Nigeria.

[45] This view to an extent must have influenced the drafters of Section 40 (1) of CITA, which provides that small companies should now be exempted from taxation; though with some conditions attached, CITA, s. 23(1) (o),while medium companies are now taxed at the rate of 20% and large companies at 30%. We are further suggesting that progressive taxing formula should be expressly stated as it is done under PITA, considering the fact that under law companies are treated as persons, though artificial persons.

[46] A Deloitte 'Taxation and Investments in the United Kingdom 2015'. Available at http://www2.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/improved-double-tax-arrangements.html accessed on June 30, 2020.