

Capital Gains Tax Administration in South Eastern Nigeria: Issues and Challenges

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A b s t r a c t

It is not news that assets especially those in the form of real estate provide the best forms of investment. This is obviously because of the fact that investments in real estate provide a hedge against inflation. Owing to the fact that real estate assets increase in value against all odds as time passes, people of all classes flock to the real estate market for investment. The government is not left out as they enact laws to levy taxes on investments in real estate. One of these taxes is capital gains tax. This is primarily a tax on a disposal of assets especially real estate assets. Unfortunately, the administration of capital gains tax is fraught with hiccups, absurdities and abnormally. This paper discussed some taxes on land and real estate assets and examined the administration of capital gains tax in South East Nigeria. The study critically reviewed the Capital Gains Tax Act of Nigeria and its application to the different states of South East geo-political zone of Nigeria. The study relied on questionnaires, interviews and visits to tax authorities and ministries of finance in the study area to assess the practice and administration of Capital Gains Tax. The study concluded that the assessment of taxes on property and real estate assets is a professional work and observed that the requisite professionals are not usually employed in the civil service and offices handling the administration of capital gains tax with dire consequences. The study recommended the employment and retaining of tax experts and real estate appraisers especially in a private sector driven economy that most states of the federation of Nigeria are striving for especially those in the South East geo-political zone.

Keywords: *Tax, Real Estate Assets, Capital gains*

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Background to the Study

One fundamental assumption in the world today is that there is no investment that is as profitable as real estate investment. Much as this is an assumption, it is also an assertion that has been proved to be true in all ramifications. The attraction of investors into real estate is like honey and bees as investors like to reap bumper profits at minimal costs. Eventually, the real estate market has become an all – comer affairs- the prudent and the fraudulent, the professionals and the quacks, the landlords as well as the tenants. Their interest is hinged upon the fact that real estate offers the best hedge against inflation, boon and recession. It in this line of thinking that governments all over the world look upon real estate taxation for the solution to their dearth of funds to carry out their functions and obligations to their constituencies.

Area of Study

According to Clawson and Stewart (1965) “one must know the boundaries and geographic location of every area to which data are applied whether it is a nation, a region, a state, a local government area, a city or any area”.

Our area of focus is the South East Geo-political Zone of Nigeria. This is one of the six geo-political zones and home to the Igbo speaking people of Nigeria. The zone stretches from longitude 6° 43'E to 8° 22'E and latitudes 4° 45'N to 7° 14'N and covers 28,987 square kilometers of land with a 2016 projected population of 16, 381,729 (Sixteen Million, Three Hundred & Eighty One Million, Seven Hundred & Twenty Nine) people. This gives a population density of about 570 (Five Hundred and Seventy) people per square kilometer. The area covered in this study is the South East geo-political zone of Nigeria. This area comprises five states of the federation including Abia, Anambra, Ebonyi, Enugu and Imo states.

Table 1- States of South East Nigeria.

State	Area (Km ²)	Population (2006)	Population (2016) Projected
Abia	4900	2,833,999	3,542,498
Anambra	4865	4,182,032	5,227,540
Ebonyi	6400	2,173,501	2,716,876
Enugu	7534	3,257,298	4,071,622
Imo	5288	3,934,899	4,918,623
TOTAL	28,987	16,381,729	20,477,159

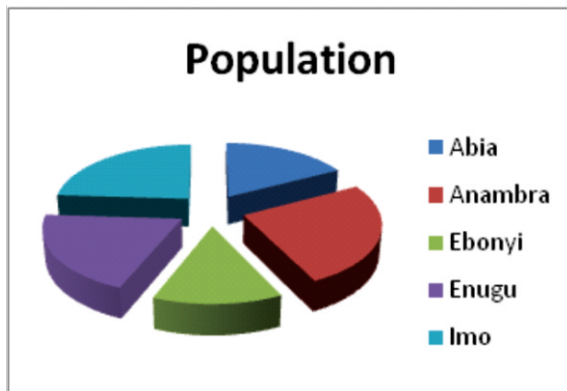


Fig. 1. Population Distribution in South East Nigeria



Fig.2. States of South East Nigeria
Source: Nigeria social studies Atlas (2007)

Literature Review

For cities and towns to become effective engines of economic growth, Clos, 2004 admitted that land has to be seen as key factor in wealth creation and national development. He was no doubt in a better to notice the dwindling fortunes of municipalities who do not know the potentials in land resources. Clos Joan was the Executive Director of the United Nations Human Settlement Program (UN-HABITAT) when he made the notable observation. At the time, many municipalities in Africa and Australia were on the verge of being declared bankrupt. His argument is that an efficient land and property taxation can foster infrastructure and services in cities. We all know that land is immovable. Buildings and other immovable improvements on the land are difficult to hide. Those who benefit

most from public investments will likely pay taxes. Thus taxes on land and improvements can capture part of the increased land values which often result from public investments and improved public programmes.

The categories of land based taxes differ from country to country, region to region, state to state. Income tax from ownership of real estate, property tax, betterment charges, documentary taxes, planning rates, development charges, inheritance or gift taxes (capital transfer taxes), stamp duty charges, capital gains taxes are just a few of the land based taxes.

Property tax is a tax assessed on real estate. The tax is usually based on the value of the property (including the land) one owns and is often assessed by local or municipal governments. Property tax is mainly used by local governments or municipalities for repairing roads, building schools and refuse disposal, or other similar services. Rates of property taxes and the kinds of property considered taxable by the local government vary somewhat in different municipalities and states. As such, when purchasing property in a new state, it is important for individuals and businesses to carefully examine the tax laws of their new locality.

Incomes arising from ownership of landed property are usually subjected to tax. It is a State based tax on incomes from letting of property including premiums arising from the right granted to any other person for the use and occupation of a property. In assessing the quantum payable, the annual rental income based on a preceding year's rent is used subject to certain deductions in the nature of repairs, maintenance and other capital expenditures. The taxable income is further affected by personal allowances for married men, children and life insurance pensions.

Betterment charges are taxes imposed on values gained by landed property as a result of specific public (government) development works and planning control. The land Betterment charges law No. 28 of 1976 provides for the levy of betterment charges on land within area where the value of land has increased as a result of the construction within those areas of certain developments, financed in whole or in part by the State or by a public corporation and to provide for matters connected therewith or incidental thereto. The tax is calculated by determining the original value of the property and the enhancement. A flat rate of fifty percent (50%) is charged upon the difference between the original value and the enhanced value.

When properties are sold and or purchased, documentary charges come into focus. In Nigeria, these fees appear in the nature of attestation fees, land instrument registration fees, mortgage permit and stamp duty charges. Of these charges, it is perhaps the stamp duty that is most implemented obviously owing to the fact that "an instrument executed in Nigeria or relating where-so-ever executed to situate or to any matter or thing done or to be done in Nigeria shall not except in criminal proceedings be given in evidence or be available for any purpose whatsoever unless it is duly stamped in the country at the time when it was first executed". According to Umezurike (2006) it is therefore obvious that

documentary taxes help in ensuring the security of the document to the owner. They are taxes on documents and not transactions (Okoronkwo, 2008) and can be produced as evidence in a court of law to prove title if need be.

There is also the Planning Rate. This is a form of tax enforced by planning authorities for the development of parcels of land within their jurisdiction.

Methodology

The questionnaire was found to be most appropriate in collecting data for this study. This is a set of questions designed to extract answers from the public and other professionals and government agencies that are involved in one way or the other with the assessment and administration of capital gains in our various government offices. However, interview schedules were also designed and assisted most handsomely in gathering information used in this study.

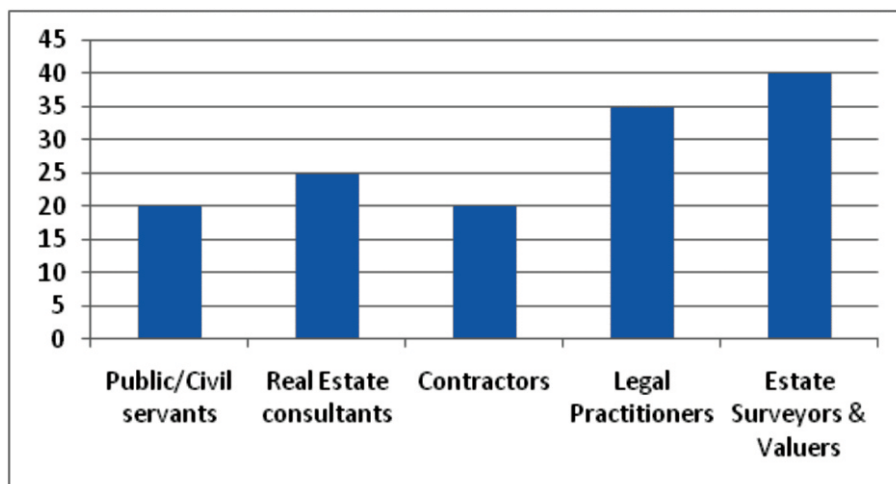
These instruments of data collections were adopted because of their obviously simple nature and the ease of administration, in addition to their appeal to the psyche of the public and those who do not wish to be identified by remaining anonymous.

Data collected were presented by the use of graphs, figures and charts such as the pie chart, histogram and frequency polygon. The use of tables was found to be invaluable as it depicted the variety and pedigree of the respondents.

Presentation of Data

Table 1. Distribution of questionnaire

S/No	Category	No. Distributed
1	Public/Civil Servants	20
2	Real Estate Consultants	25
3	Contractors	20
4	Legal Practitioners	35
5	Estate Surveyors & Valuers	40



Discussions

The relevant statute governing Capital Gains Tax in Nigeria is Cap 42 Laws of the Federation of Nigeria 1990. Also known as Act Cap C1, LFN 2004, the law states that

“there shall be charged a tax to be called capital gains tax for the year of assessment and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1st April, of the year on a disposal of assets”.

The Act also states in Section 2(1) following that the rate of capital gains tax shall be twenty percent and shall be chargeable on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as may be allowed under the Act in the computation of such gains. Further the act provided that approved expenditures must be allowed before the tax is computed. This is as provided in Sections 13 and 14 of the act.

1. In the computation of capital gains the sums allowable as a deduction from the consideration accruing to a person on the disposal of an asset shall be restricted to –
 - (a) The amount or value of the consideration, in money or money's worth given by him or on his behalf wholly, exclusively and necessarily for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly, exclusively and necessarily incurred by him in providing the asset;
 - (b) Any amount of an expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf for the purposes of enhancing the value of the asset being expenditure reflected in the state or nature of the asset at the time of the disposal;
 - (c) The amount of any expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf in establishing, preserving or defending his title to, or a right over, the asset; and
 - (d) The incidental costs to him of making the disposal.
2. For the purposes of this section and any other provision of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly, exclusively and necessarily incurred by him for the purposes of the acquisition or, as the case may be, the disposal being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent, or legal adviser and costs of transfer or conveyance (including stamp duties) together–
 - (a) In the case of the acquisition of an asset, with costs of advertising to find a seller; and

- (b) In the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the capital gains, including in particular, expenses reasonably incurred in ascertaining market value where required under this Act.

Other Allowable Deductions are Expenditures Incurred on

It must be recalled that not all gains are chargeable by the provisions of this act. Those that must comply with the act are as covered by section 6 (1) and includes a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular-

- (a) Where any capital sum is derived by way of compensation for any loss of office or employment;
- (b) Where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets;
- (c) Where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights;
- (d) Where any capital sum is received as consideration for use or exploitation of any asset; and
- (e) Without prejudice to paragraph (a) of this section, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.

It follows therefore that no specific rules were followed in itemizing gains that should be chargeable under the act except of course "perceived gains". It is no longer news that there are many more ways of getting gains than the itemized especially politics and international trade. These were neglected but the gains people obviously make out of their business acumen in investments are subjected to tax.

The result of the survey indicated that though people make gains from the category of items subjected to capital gains taxes, not all of them are declared while those declared were done in a manner to cheat the government through under declaration and under valuation by the assessment officers.

It was also evident from results collated that the assessment is fraught in most cases with fraudulent practices. In one instance, an allowance of over twenty percent was accepted instead of the rate prescribed by the act. In some other cases, genuine allowances were not entertained because the assessment officer did not know the assessed or the professional representing him.

The survey exposed mind blowing incidences in the sense that some states were applying different rates while others were busy applying a static rate in allowable gains. In Imo State for example, a rate of ten percent (10%) was charged on a transaction of Three Million Five Hundred Thousand Naira (N3,500,000) with an allowance of six percent (6%) on expenses whereas a counterpart transaction in Abia State was charged though at the same rate of ten percent but an unwholesome allowance of thirty percent (30%).

It was indeed surprising that the majority of the respondents especially those in the public/civil service category were ignorant of capital gains tax, its assessment and importance/applicability. Many exhibited a very high level of ignorance and were of the opinion that it is an unwarranted tax that further impoverishes the citizens who genuinely came into inheritances. This view was widespread among the respondents with some suggesting that owing to the dearth of funds for governance, it will be appreciated if the government will undertake a review of the act to make the rate of the tax to be within acceptable margin between two percent (2%) and five percent (5%).

The area that seems to require urgent attention is the use of non professionals in the assessment process. It was very perplexing that non tax and valuation professionals are carrying out the assessment of capital gains tax. This scenario is widespread in almost all the states of the South East geopolitical zone (the area of study). Many of the officers are those who grew within the rank and file of civil/public service with little or no training in the art and science of valuation. Perhaps this may be the cause of the haphazard application of rates within the geo political zone.

Conclusion

The Capital Gains Tax law was first enacted in 1967 as Capital Gains Tax Act No. 44 of 1967. Since then, there have been several amendments such as the Finance (Miscellaneous Taxation Provisions) Decree No. 3 of 1993, Finance (Miscellaneous) Taxation Amendment Decree No. 3 of 1993, Finance (Miscellaneous Taxation Provisions) Decree No. 30 1996, Finance (Miscellaneous Taxation Provisions) Decree No. 18 1998, Finance (Miscellaneous Taxation Provisions) Decree (No. 2) No. 19 1998 And Investments And Securities Decree No. 45 1999. These efforts by government to restructure the laws guiding capital gains taxation in Nigeria ostensibly did not yield much. The Finance (Miscellaneous Taxation Provision) Decree No. 2 is the same as Act No. 19 Laws of the Federation of Nigeria 1990. It was amended as Cap 173 Laws of the Federation of Nigeria 2004 to give effect to fiscal measures. This law amended the rate of capital gains chargeable from twenty percent (20%) to ten percent (10%)

The continued neglect of capital gains tax as one of the major tax heads by government does not auger well for the nation especially states of the South East geopolitical zone of Nigeria. These states are all landlocked with no access to the development of ports from which revenue could be generated as is the case with states of the South-South geo political zone; or other geopolitical zones of Nigeria that have access to the country's borders with other countries. The proper understanding and utilization of capital gains tax in the South East geopolitical zone will help in developing a robust economy and ensuring very rapid sustainable development of the region.

Recommendations

1. The assessment of tax is a professional work and not as simple as it may seem to the ordinary man. The Chartered Institute of Taxation of Nigeria (CITN) and the Nigerian Institution of Estate Surveyors & Valuers (NIESV) are the only recognized professional bodies that train people in this regard to handle tax

matters in Nigeria. While the first group trains tax experts, the second group trains valuers who carry out analysis for the purposes of determining the value of real estate of whatever nature and for whatever purpose. Surprisingly however these classes of professionals are not in the employment of the different boards of internal revenue. It is strongly recommended that these professionals be employed in the public/civil service and deployed to their relevant sections.

2. Some states of the geopolitical zone operate a regimented tax system whereby taxes are pre-determined and assumed even without assessment and verification. This is neither equitable nor justified and negates all the principles of taxation. It is also neither democratic nor development oriented especially in a landlocked zone like the South East geopolitical zone and should therefore be abhorred.
3. To improve on the revenue generating efforts of the states in the South East geopolitical zone through property taxation especially capital gains tax, there is the need to have certificates of value attached to transactions on property. The certificate must be given by an Estate Surveyor/Valuer who is the only competent professional to carry out valuation. The valuation must be cross checked by internal mechanisms to avoid abuse.
4. The public seem not to be very much aware of some genuine taxes in existence but illegal and local taxes. It is recommended that a concerted public enlightenment program be initiated and sustained on the taxes and the need for citizens to comply with the payment thereof.
5. This study has eventually exhumed some anomalies in the operation of capital gains tax law in Nigeria especially South-East geopolitical zone. It will be greatly appreciated if government should undertake a thorough review of the laws in practice.

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