
A CRITICAL ANALYSIS OF STAMP DUTY ASSESSMENT AND ADMINISTRATION IN NIGERIA: A STUDY OF IMO STATE

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Abstract

As one of the tax heads in Nigeria, Stamp Duties is a veritable tax imposed on documents and instruments of transaction for the much needed revenue to run democratic government. This is as provided in the Stamp Duties Act Cap 411 Laws of the Federation of Nigeria 1990 as amended. However, the assessment and administrations by the Commissioners for Stamp Duties in Nigeria especially in Imo State leaves much to be desired. This study examined the Stamp Duties Act and other relevant legislations in the country concerning assessment and valuation of interests and the instruments thereto. Primary and secondary data were sourced. The study concluded that the menace of stamp duty administration in Imo State has so affected the economy of the State, increased capital flight and reduced the confidence of the public on the office of the Commissioner for Stamp Duties. The study recommended measures that will be taken to ameliorate the situation.

Key Words: Stamp Duties; Instruments; Die; Consideration; Capital Flight; Assignment; Valuation.

Background to the Study

Stamp duty is a tax that is levied on documents and instruments to give it legal effectiveness. Historically, this included the majority of legal documents such as cheques, receipts, commissions, marriage licenses and real estate transactions. It is required by the State from such transactions so that the parties could contribute in their own measure to the revenue that is so much needed for the running of the affairs of the state. Originally it was a postage stamp that was affixed to the document or instrument to denote stamping. However, this was found to be clumsy and untidy as many people who had carried out transactions worth millions of Naira bought postage stamps as they thought fit and affixed to the documents as they deemed necessary. No checks were carried out as to the appropriateness of the stamp so affixed and the assessment. The physical stamp (a revenue/postage stamp) so affixed or impressed upon the document denoted that stamp duty had been paid. Any document so lacking in this very important exercise was not acceptable in evidence in any court of law in Nigeria. More modern versions of the tax no longer require postage stamp.

Stamp duty is thought to have originated in Spain, being introduced (or re-invented) in the Netherlands in the 1620s, France in 1651, Denmark in 1657, Prussia in 1682 and England in 1694. Stamp duty was introduced into Nigeria with the coming of the British in the 1890s when the portuguese merchants extorted the locals with their smartness. It was institutionalized in the early 1900s but did not get the legal backing until 1st April, 1939 when the Stamp Duties Act was enacted by Parliament. Ever since, the law has been severally amended; the last resulting in the Stamp Duties Act Cap 411 Laws of the Federation of Nigeria 1990.

Act	Resolution/Order	Laws of Nigeria
Act No. 5 of 1939; 28 of 1941; 17 of 1942; 26 of 1946; 38 of 1950; 2 of 1953;	No. 2 of 1948; No. 1 of 1951; No. 6 of 1951; Order 47 of 1951;	L.N. 64 of 1954; L.N. 131 of 1954; L.N. 47 of 1955; L.N. 90 of 1956 CAP 411 LFN 1990
6	4	5

Table 1. Amendments and Revisions of the Stamp Duty Act in Nigeria

Imo State of Nigeria

Imo State lies within latitudes 4° 45'N and 7° 15'N, and longitudes 6° 50' E and 7° 25'E. It has an approximate area of 5,525 square kilometers. Imo State is bounded on the North by Anambra State, on the East by Abia State, on the West by the River Niger and Delta State and on the South by Rivers State.

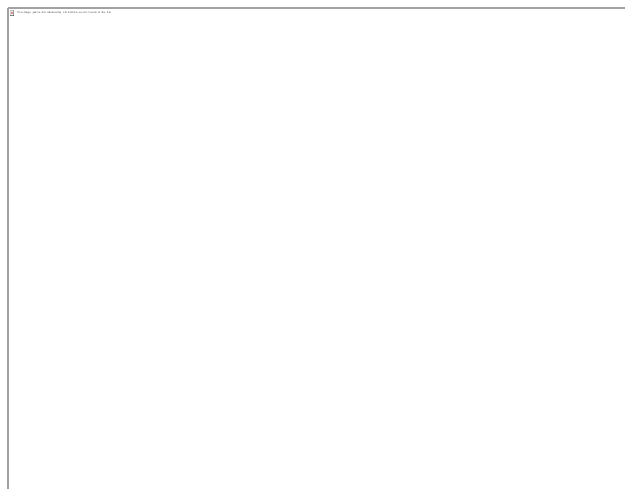


Fig. 1. Map of Nigeria showing Imo State

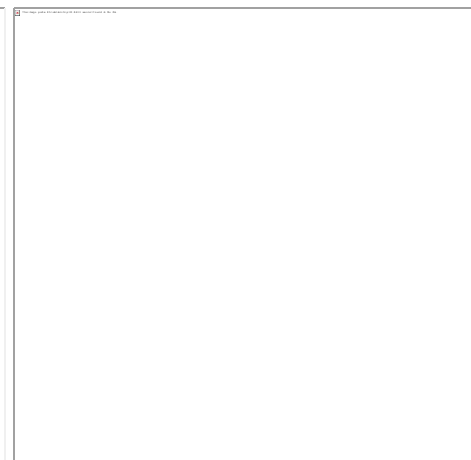


Fig. 2. Map of Imo State showing Senatorial zones and Local Government Areas

With a 2014 projected population of 7,205,150 people, Imo State has a population density of 1,304/km² second only to Lagos State. There are Twenty Seven (27) local government areas accommodating Six Hundred & Thirty Seven (637) autonomous communities otherwise known as Community Government Councils (CGC).

The Stamp Duty Act

The Stamp Duties Act made provision for the use of “die” in place of postage stamp although it did not automatically stop the use of postage stamps except in some cases. In accordance with the interpretation in the Act, “die” includes any plate, type, tool, or implement whatever used under the direction of the Minister of Finance and Economic

Development or his counterpart in the State, as the case may be, for expressing or denoting any duty, or rate of duty or the fact that any duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool or implement.

Section 4 of the Act stated in clear terms, the competent authority to impose charges and collect stamp duties.

1. *The Federal Government shall be the only competent authority to impose charge and collect duties on instruments specified in the Schedule to this Act if such instruments relate to matters executed between a company and an individual, group or body of individuals.*
2. *The State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.*
3. *In this section, "company" includes banks and other financial institutions.*

Section 5 of the Act also established the manner of denoting Stamp duty on instruments.

1. *All duties for the time being chargeable under the provisions of this Act upon any instruments shall be paid and denoted according to the provision in this Act, and, except where express provision is made to the contrary in this Act or by the regulations made there under, are to be denoted by impressed stamps only.*
2. *Where the duty may be denoted by adhesive stamps, postage stamps may, subject to the provisions of any Act or regulation, be used for the purpose.*
3. *Every instrument written upon stamped material shall be written in such a manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp appear on the face of the instrument and cannot be used or applied to any other instrument written upon the same piece of material.*
4. *No impressed or embossed stamp or stamps made by means of a die shall be used in any manner except upon the document upon which it was originally impressed, embossed or stamped.*
5. *The amount of the duty upon any instrument may be denoted by several stamps, and stamps of greater value than is required may be used upon any instrument.*

When Stamp duties are appropriately paid and denoted by the use of die, the instrument upon which the duty has been so paid has the power of government backing it as specifically provided for by section 19 of the Act.

Assessment of Duty

The power and responsibility to assess instruments rests squarely with the Commissioner for Stamp Duties. This is as provided by the law in sections 6 and 9

6

1. *The relevant Civil Service Commission may appoint one or more officers who shall be commissioners of stamp duties and shall have the care and management of the duties to be taken under this Act.*

2. *Except as otherwise provided by this Act or by any law for the time being in force, any decision, act or thing required to be made or done by commissioner may be made or done by anyone of the said commissioners when there are more than one commissioners.*
3. *When appointing a commissioner, the President or Governor, as the case may be, may signify that the duty of such commissioner shall be confined to adjudication under section 15 of this Act.*

19

1. *Every instrument bearing a certificate of a commissioner that it is not chargeable with duty or that it is duly stamped, or being stamped with the amount of duty assessed and certified by him shall be admissible in evidence and available for all purposes, notwithstanding any objection relating to duty: Provided that an instrument upon which the duty has been assessed by a commissioner shall not be stamped otherwise than in accordance with the assessment of the commissioner.*

The Commissioner for Stamp Duties by the provisions of sections 15 and 16 is expected to provide opinions of value of instruments so assessed and issue certificates thereto.

- 1.
1. *Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, upon the application to a commissioner, payment of a fee of twenty-six kobo and production of both the instruments, be denoted upon such first-mentioned instrument by a certificate under the hand of the commissioner.*
- 2.
1. *Subject to such regulations as the Minister or Governor, as the case may be, may think fit to make, a commissioner may be required by any person to express his opinion with reference to the amount of duty (if any) payable on any executed instrument; and in such case, a certificate shall be endorsed on the instrument, under the hand of the commissioner, stating that, in his opinion, such instrument is not chargeable with any duty, or the particular amount with which, in his*
3. *opinion, it is chargeable or, if in his opinion such is the case, that is duly stamped.*

Observations and Recommendations

Having examined some of the provisions of the Stamp Duties Act and the manner in which the law is being implemented in most States of Nigeria especially in Imo State, it becomes necessary to draw public attention to the claws that have held the Federal and States governments prey to whittled revenue while making Commissioners of Stamp duties all over the country richer.

- i. Cap. 111 Laws of the Federation of Nigeria 1990 (Estate Surveyors & Valuers Registration Act) now Cap E27 Law of the Federation on Nigeria 2007 recognized the Estate Surveyor and Valuer as the only professional empowered to appraise assets and resources of whatever dimension in Nigeria and express opinions of value. This position is established also by the provisions of the Land Use Act Cap 202 Laws of the Federation of Nigeria 1990.

It follows therefore that the office of the Commissioner for Stamp Duty should be occupied by an appraiser who by his education, training and profession is versed in the art and science of establishing the value of all manner of assets including instrument pertaining thereto.

The appointment of Commissioner of Stamp duty through the rank and file of the civil service is a misnomer. Indeed, that explains the avalanche of protests in many states of the Federation concerning inappropriate assessments of stamp duties and the loss of revenue to the government treasury.

ii. With the global economic recession or meltdown and the fiscal policies of government, Nigerians are becoming wiser and even smatter. Public advocacy and Non-governmental organizations are busy educating the people on their rights. Soon, the courts will be awash with litigations against the Commissioners of Stamp Duties especially in Imo State where assessments are undertaken randomly without recourse to the statutes. Fortunately, the Stamp Duty Act provides for litigations against unfair assessments. This is as provided in section 21 of the act:

21

1. *Any person who is dissatisfied with the assessment of a commissioner may, within twenty-one days after the date of the assessment, and on payment of duty in conformity therewith, appeal against the assessment to the High Court of the State in which the assessment was made and may for that purpose require the commissioner to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.*
2. *The commissioner shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter but not later, be filed by him in the high Court and thereafter be heard by the said court.*
3. *Upon the hearing of the case, the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.*
4. *If it is decided by the court that the assessment of the commissioner is wrong, the court shall assess the correct amount of duty; and*
 - a. *in the event of an excess of duty having been paid in conformity with the erroneous decision of the commissioner, any excess of duty which may have been paid in conformity with such decision, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine; and*
 - b. *in the event of the court assessing an amount of duty greater than that assessed by the commissioner, the difference between the amount of*

duty assessed by the commissioner and the amount assessed by the court together with any fine or penalty which may have been incurred but not yet paid, with or without costs as the court may determine, shall be paid by the appellant, forthwith or within such time as the court may direct, in stamps which shall be affixed to or impressed on the document in the presence of a commissioner and in the case of adhesive stamps, cancelled by him.

- iii. The menace of stamp duty assessment by the Commissioner for Stamp Duties in Imo State has so affected the economy of the state and reduced public confidence on the office of the Commissioner for Stamp duties to the extent that vendees and vendors prefer to travel to neighbouring states especially Enugu to stamp their instruments. Thanks to the provision in the act that a document can be stamped anywhere within the Federal Republic of Nigeria with the same effect. Others prefer to reduce the amount of consideration for their transactions thereby cheating the government of much needed funds.
- iv. The Nigerian Institution of Estate Surveyors & Valuers (Imo State Branch) had severally advised the government of Imo State through the Commissioners for Lands, Survey and Urban Development; and Finance on the implications of their various regulations whereby assessments are inappropriately carried out resulting in capital flight and a reduction of the revenue to Imo State government. The Institution had proposed the certification of transactions by Estate Surveyors and Valuers who must be held professionally accountable for such certifications in the event of a flaw. In that regard, the laws of the Federation will be complied with in addition to curbing the avalanche of complaints against inappropriate assessments.

Conclusion

Tax is a compulsory contribution from individuals and business organizations meant to finance government expenditure. It is also a means of making the citizens contribute to the cost of providing collective needs. It is through the tax system in particular that revenue can be generated to finance democratic governance. Taxation must perpetuate growth of civilization in terms of increasing levels of productivity of systems in an increasing competitive world if it must succeed.

Notwithstanding the various laws establishing the different organs/machineries of tax administration in Nigeria, Cap E27 Law of the Federation of Nigeria 2007 empowered the ESTATE SURVEYOR & VALUER as the only professional qualified and so authorized to assess and determine the value of properties including interests thereto and the tax payable under different heads. It is unfortunate that those who have no business with valuation or the assessment thereof are the ones carrying out the assignment of valuation and assessment of tax including Stamp Duties to the disservice of the States and the nation.

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