LEGAL EVALUATION OF THE EFFECT OF GLOBAL FINANCIAL MELTDOWN ON THE TAXATION OF THE CAPITAL MARKET ON VALUE ADDED TAX: THE NIGERIAN EXPERIENCE

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Abstract

The paper aims to unravel the effect of global financial meltdown on the taxation of the Nigerian capital market on Value Added Tax through a critical examination of relevant literature on the subject area. In the bid to achieve this objective, resort is made to adopting a theoretical and doctrinal methodology, wherein relevant primary and secondary sources materials were utilized. This includes, a critical examination of relevant statutory provisions, case law and scholarly literature. The information obtained through these sources, was subjected to a contextual and descriptive analysis. The paper finally reaches its findings by revealing that the global economic meltdown has much to do with the crash of prices/stock in the Nigerian Stock Exchange market thereby having serious effect on the investment mobility as in taxation of Value Added Tax. The paper therefore recommends the need for education of shareholders (investors) in Nigeria to appreciate the price movement and the Central Bank of Nigeria should continue to monitor the level of liquidity in the system so as to maintain a reasonable balance of cash flow in the economic system.

Key Words: Taxation, Capital Market, Value Added Tax, Economic, Stock.

1.0 Introduction

The paper sets to examine the effect of the economic meltdown on the taxation of the Nigeria Capital Market on Value Added Tax. It highlights the following: Weakness of Nigeria Capital Market; Instrument Traded in the Nigeria Capital Market; A Brief History of the Nigeria Capital Market; Taxation of the Nigeria Capital Market on Value Added Tax; the Charge of Double Taxation and Capital Market Operation in Nigeria; Effect of the Global Financial Meltdown on the Taxation of the Nigeria Capital Market; Conclusions and Recommendations.

1.1 Weakness of Nigeria Capital Market

The following weaknesses are identified in this paper thus:

i. Lapses of Regulation and weaknesses in structure and existing rules to promote good corporate governance;
ii. Appalling failure on the part of mostly indigenous companies to provide financial statement to stakeholders as and when due and to hold statutory meeting;
iii. Problem of compliance;
iv. Capital market weak on foreign investors trading and government indecisive policies.

The capital market can be described as a forum for trading and sourcing of medium and long-term funds for corporate and statutory entities. It is a complexity of invitations (involving the issuer, on the one hand, the investors, in the other hand and many other people in between such as regulator and facilitators) and the mechanism through which long-term funds of individual, household, firms and government are polled and made available to various sectors of the economy requiring such funds through corporate and statutory entities issuing securities to fund their operations.

There are several reasons why there is need for regulation and control of corporate entities within the capital market in particular and the economy in general thus:

a. The product or instrument traded in the capital market is not physical or visible and therefore, cannot be felt. Its fitness for purpose or work cannot be physically assessed, determined or evaluated. This can only be done through evaluation of the information disclosed in the offer document or in the financial statements.[1]

b. The need to maintain the integrity of the primary and secondary market and thereby retain investors confidence in the capital market makes it imperative that the market be regulated so as to eliminate fraud, abuses, nepotism or cronyism, misrepresentation and other forms of market distortion.

Clearly, market abuse will shake investors confidence and deny the market funds which investors bring to the market and are allocated to productive sector of the economy through sale of securities. As aptly put by Arthur Levitt, ex-chairman, U.S. Securities and Exchange Commission thus:

> "If a country does not have a reputation for strong Corporate Governance practices, capital will flow elsewhere"[2]

It has to be made clear that the *Investment and Securities Act* is not the only statutory basis for corporate governance and regulation of the capital market. There are indeed other laws. We must quickly point out that the basic law on corporate governance is the *Companies and Allied Matters Act.*[3] This law which provides for the formation of corporate entities in the first place also sets the theme and structure for corporate governance, it provides that every corporate entity must have a Memorandum and Article of Association or Constitution.[4] This is the document setting up the structure of governance of the entity. The document is also regarded as a contract between members of the company.[5] It is in this document that the Board of Directors or Governors or Executive Council or Registered Trustee is established and the mode of their organizational operation provided for. The Act allows for the creation of different kinds of corporate entities such as private limited liability company, public limited liability company, company limited by guarantee, unlimited company, incorporated trustees and business names of firms.[6] The Act also provides for the meeting of these corporate entities. For companies, it is usually the annual general meeting, board meeting, statutory meeting and extra ordinary general meeting. For unincorporated association, it is usually an executive meting and general assembly. The times and frequency of

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[1] C. O. Okereke. "Promoting Good Corporate Governance: The Role of Capital Market Regulation" paper presented at the Capital Market Seminar on Issues in Corporate Governance organized by Princewater House Coopers at Lagos, Nigeria on July 9, 2002.

[2] Quote available at <http://www.africansea.org/asea/(5(myl4s1452nvvhb21ln2evnye))/library/establishing_CG_code_to_be_adopted_by_stock_exchangespdf> Assessed 23rd July, 2018.

[3] Cap C20 Laws of the Federation of Nigeria (LFN) 2004.

[4] *Section 27 Companies and Allied Matters Act*, Ibid.

[5] *Section 41(1) of the Companies and Allied Matters Act,* Ibid.

[6] Detailed discussion o the nature and characteristic of these forms of business association is beyond the scope of this paper. For this see J.O. Orojo. *Company Law and Practice in Nigeria.* (3rd ed.) (Lagos: Mbeyi and Associates, 1992) p. 3.

such meeting, including other vital elements of their constitution such as quorum are guided by their relevant domestic constitution and regulated by the Act.
Another important instrument of corporate governance for public limited companies under the Companies and Allied Matters Act is the audit committee,[7] which consist of six (6) members made up of equal number of director and shareholders. The committee has responsibility for approving the financial statement of the company. It would seem from its special shareholder membership that the audit committee is meant to be the watchdog of shareholder in the consideration of the financial statement of a public company. This provision is in recognition o the need for greater shareholder scrutiny of the financial statement usually churned out by public companies. It was no doubt intended that the additional reporting requirement to the audit committee would improve the level of transparency and accountability in corporate governance whether the intent translates to practice is very much debatable.[8]

The long title of the Investment and Securities Act are the salient objectives of the Act as follows:

i. The establishment of the Securities and Exchange Commission as the apex regulatory authority for the Nigerian Capital Market;
ii. Regulation of the market to ensure the protection of investor;
iii. Maintenance of fair, efficient and transparent market and reduction of systemic risk and for related matters.

In this regard, through its rule making power, SEC developed the Code of Corporate Governance 2011 for public companies[9] and as well created an additional structure for the enthronement of corporate governance in public companies such as the institution of the office of compliance officer for public companies.

Despite the few lapses in regulation, there are not enough structures and existing rules to promote good corporate governance and eliminate or grossly reduce bad governance. It would seem to us that where the nation's regulatory regimes falters most is in enforcement. No doubt, the greatest problem in Nigeria today is the destruction of her value system by vices such as corruption, nepotism, cronyism, political instability, insecurity etc. These human factors are responsible for most of the other problems in the country. The capital market is not insulated from the general society. Thus, although the Nigeria Stock Exchange (N.S.E.) and Security and Exchange Commission (S.E.C.) as regulators may design the best rule and have the best structure. If those regulating or to be regulated suffer from the same societal malaise now prevailing there will be little success in enforcement. Failure of the court system to understand matters relating to capital market transactions and their importance in the economy, the inability of SEC to take over the management of defaulting companies (evidence of weak regulatory environment) and current

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[7] *Section 359 of Companies and Allied Matters Act,* Ibid. The National Accounting Standard Board (NASB) Act 2003 and subsidiary legislation also deal extensively with provision and rules relating to corporate governance and audit committee in this regard. See Idigbe Anthony. "A Review of CAMA 1990: Issues in Corporate Governance Audit Committee and Auditor Independence". Paper delivered at the Nigeria Accounting Standard Board (N.A.S.B) Fourth Annual Corporate Financial Reporting Summit and Dinner held at Sharaton Hotels and Towers Ikeja, Lagos State Nigeria, on November 14, 2007. The N.A.S.B has now been replaced by Financial Reporting Council of Nigeria (FRCN) created under the FRCN Act 2011.
[8] Ibid.
[9] This replaced the previous SEC, Corporate Affairs Commission (CAC), Joint Code of Corporate Governance for Public Companies.

general weakness in the rule of law in Nigeria are major factors resulting in instance of abuse in the market going unsanctioned.[10]

There is an appalling failure on the part of mostly indigenous public companies to provide financial statements to stakeholders as and when due, hold statutory meeting etc. As under Companies and Allied Matters Act, Investment and Securities Act and rules of the Nigeria Stock Exchange, compliance with prescription on management of the company and good corporate governance is weak. To bolster compliance, the NSE recently introduced several measures such as compliance award which was won by Nigerian Breweries Plc in 2012. They also have set fines for default and automatic listing of non-compliant companies on the Nigeria Stock Exchange website under several categories such as "Below Listing Standard (BLS) list", "Awaiting Regulatory Approval (ARA) list", "Capital Reconstruction Exercise (CRE) list" or "Delisting In Progress (DIP) list". Unfortunately, until the recent banking crisis that gravely affected the Nigeria capital market in late 2008 and early 2009, regulated such as the NSE, SEC and Corporate Affairs Commission (CAC) had treated compliance issues lightly. We believe that human factors in the Nigerian context are majorly responsible for this malady. The result of any failure to improve corporate governance is the slow and painful death of not just good corporate governance in Nigeria and of the companies but also the capital market itself. We have always been of the view that every system must have a way of weeding itself of dead wood. Otherwise, it will pollute the others. It is for this reason that there are insolvency laws. It is also for the same reason that we should not allow on the capital market, companies that are rotten in terms of corporate governance as they tend to pollute the others.[11]

Activities in the capital market were weak. Simply attributable to foreign investors' sluggish participation over foreign exchange crisis. The capital market has not been a preferred destination for foreign investment since the economic crisis. Foreign investors that wanted to invest in Nigeria depend on prices of crude oil and exchange market. Since the Central Bank of Nigeria has not been handling the foreign exchange market properly, it is expected to affect foreign investors participation in the equities market. Despite the transmission from an administrative fixed exchange rate, the Central Bank of Nigeria has not been able to organize a transparent foreign exchange market that tends to elevate the confidence of foreign investor. Factors responsible and indecisive policies that have worsened economy and corporate earnings of listed companies are:

i. Lack of seriousness in tackling foreign exchange market by Central Bank of Nigeria from crude oil dwindling prices have massively discouraged foreign investor in the capital market;
ii. The direct sale of foreign exchange to Bureau De Changes (BDCs) is a national disgrace and it does not give any hope that CBN is doing a job by organizing;
iii. The risk of investing in Nigeria is very high and that is why foreign investor have decided to stay away;
iv. The Federal Government delayed passage of 2016 budget and unclear economic blueprint had impacted on foreign investors sentiment trading in the equities market;

[10] See *Bomkolans Investment Limited and Ors v Central Securities System Ltd and Ors* (2009) LPelr – CA/A/213/2005.
[11] See Idigbe Anthony Ikemefuna. *Legal Issues in Capital Market Operation in Nigeria* (Lagos: Distinct Universal Ltd, 2015) pp. 4 – 11.

v. Weakness of naira at exchange rate market had unsentimentally impacted on the nation's economy which has led foreign portfolio investment exit;
vi. Monetary and fiscal policies of Central Bank of Nigeria and Federal Government e.g. ban on 41 Items access to foreign market discontinued sales of foreign exchange to Bureau De Changes (BDCs), raising of the Monetary Policy Rate (MPR) by 100 basic point from 11% to 1% while Cash Required Ratio (CRR) was moved to 22.50% from 20% it was in 2015.[12]

1.2 Instrument Traded in the Nigeria Capital Markets

The capital market is a "securities market in which stocks and bonds with long term maturities are traded".[13] It has played a key role in enhancing corporate governance in Nigeria. The market consists of the securities and non-securities segment[14]. While the latter consist of bank and other financial institution with their instrument such as loans, mortgages and leases, the former consist of both the fixed securities (debenture and bonds) and the shares market.[15] In Nigeria, the bond market is dominated by government[16] while the shares market is dominated by private enterprises. In terms of institutional arrangement, the capital market consist of a primary market which is dominated by the brokers, dealers and venture capitalists and a secondary markets dominated by the Stock Exchange. The formers main concern is with the primary issue, while the secondary market handles already existing issues of the exchange.[17] *Section 315 of the Investment and Securities Act* defines the latter as "any exchange registered by the commission … which constitutes, maintains or provides a market place for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the function commonly performed by an exchange.

The function of the primary market in mobilizing and channeling savings into long term investment and infrastructural market as it offers diverse options to investors and financiers.[18] It directs the flow of capital from channels least needed at a given time to channel in need at the same time. The liquidity and flexibility offered by the secondary market further strengthens the capital market as a convenient platform where investment could be disposed off without much difficulty. Through this role of mobilizing and channeling funds, the capital market enables wider investment participation in economic activities, encourage financial discipline, transparency and

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[12] See Areas of Weakness in Capital Market Posted January 3 2017 <http://www.Nigeriannews.dirct.com/capital_market_on_foreign_investor_trading_government_indecisive_policies/> Accessed on 22nd September, 2017.

[13] Henry Campbell Black M.A. *Blacks Law Dictionary with Pronunciation* (6th ed.) (U.S.A: West Publishing Co., 1990) p. 209.

[14] R. M. Stulz. "Securities Laws, Disclosure and National Capital Markets in the Age of Financial Globalization" (May 2009) Vol. 47 No. 2 *Journal of Accounting Research* p. 350; S. I Ikhide. "Financial Liberalization and the Growth of the Capital Market in Nigeria" (1997) No 1/2 *African Review of Money Finance and Banking* pp. 5 – 6.

[15] Ibid at p. 6.

[16] This was originally supported by the Income Tax Management Act 1961, Trustee Investment Act 1964; see also the Pension Reform Act, 2004 and the Investment and Securities Act, No. 29, 2007.

[17] S. I Ikhide. "Financial Liberalization and the Growth of the Capital Market in Nigeria" op.cit, p. 7.

[18] G.A Akamiokhor. "Building Capital Market Regulatory Institution in Developing Countries – The Nigerian Experience" (June/September 1996) Vol. 45 No. 2/3 *Social and Economic Studies: Special Monetary Studies Issue Capital Markets in Regional Development*, pp. 249 – 278 at p. 251.

accountability, promotes solvency and corporate competitiveness, and reduces over-reliance on debt financing with its characteristic challenges of enforcement in the country.[19]

Secondly, the market informs and guide investment decision as it is the barometer of determining the profitability of certain class of business thereby preventing the misdirection of investment into unnecessary, unprofitable ventures. In particular, the stock exchange has been rightly described as "the clearing house for all news of business significance" thereby relieving investors of the trouble and expenses of seeking to know 'the many isolated facts underlying the operation, management and future prospect of corporation'.

Thirdly, the capital market also "discount the future",[20] by giving a barometer to gauge the prospective value of other properties not listed on the exchange. This aids significantly in determining the economic direction of a country. For instance, previous financial crises around the world were mostly preceded by falling stock prices giving sufficient clues as to the position of the real economy.[21]

Fourthly, capital market exert significant influence on the money market often preventing financial panic in the sense that stocks and bonds used as collateral for bank loans could readily be liquidated by the bank without affecting other real business.

Fifthly, capital market allows retail investors to have a long term retirement plans. Furthermore, Government and supranational bodies could easily resort to the market in financing infrastructural development project.

Not surprisingly, therefore, these functions and advantages combined to make the capital market an efficient avenue for smooth investment activities in market economies. It is central to the growth, development and strength of these economies and plays key roles in sustaining the financial system.[22] It became popular after the collapse of the Soviet Union which saw the "triumph" of capitalism.[23] In functional terms, the capital market brings so many players together for mutually beneficial purposes.[24]

The capital market, as it is known, is that segment of the financial market that deals with the effective channeling of medium to long-term funds from the surplus to the deficit unit. The process of transfer of funds is done through instruments, which are documents (or certificates) showing evidence of investment.

There are four (4) broad categories of capital market instrument thus:

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[19] M. Bello. "Clearing the Mine Field for Secured Lenders in Nigeria: Pledge of Land as alternative to mortgage security in Nigeria." (2011) Vol. 4 *Bayero University Journal of Public Law (B.U.J.P.L),* p. 50.

[20] S.S. Huebner. "Scope and Function of the Stock Market" (May 1910) Vol. 35 No. 3 Annals of the American Academy of Political and Social Science. Stocks and Stock Market, p. 12.

[21] Ibid; Noting that "a market rise or decline in the general level of prices is the surest indication, in fact an almost unfailing index, of coming prosperity or depression".

[22] See International Organization of Securities Commission (I.O.S.C.O) Objectives and Principles of Securities Regulation, IOSCO September, 1998 p. 1.

[23] G.A Akamiokhor. "Building Capital Market Regulatory Institution in Developing Countries – The Nigerian Experience" op.cit, p. 250.

[24] A. B Ahmed, Muhammed Bello. "Regulatory Failures and the Collapse of the Capital Market in Nigeria: Aligning Responsibility with Accountability" (2015) Vol. 40 *Journal of Law Policy and Globalization*, pp. 169 – 171.

i. Debt instrument (debt-government bonds);
ii. Equities (also called common stock e.g. ordinary shares, preference shares);
iii. Derivatives (industrial loans/debenture stocks).
iv. Preference shares.

A debt instrument is used by either companies or government to generate funds for capital intensive project. It can be obtained either through the primary or secondary market. The relationship in this form of instrument ownership is that of a barometer – creditor and thus does not necessarily imply ownership in the business of the borrower. The contract is for a specific duration and interest is paid at specified period as stated in the trust deed (contract agreement). The principal sum invested, is therefore repaid at the expiration of the contract period with interest either paid quarterly, semi-annually or annually. The interest stated in the trust deed may be either fixed or flexible. The tenure of this category ranges from 3 to 25 years. Investment in this instrument is, most times, risk – free and therefore yields lower returns when compared to other instruments traded in the capital market. Investors in this category get top priority in the event of liquidation of a company. When the instrument is issued by the Federal Government, it is called a Sovereign Bond, when the instrument is issued by a State Government, it is called a State Bond, when the instrument is issued by Local Government, it is called a Municipal Bond and when it is issued by a corporate body (company) it is called a Debenture, Industrial Loan or Corporate Bond. With respect to equities (also called Common Stock) the instrument is issued by companies only and can also be obtained either in the primary market or the secondary market. Investment in this form of business translates to ownership of the business as the contract stands in perpetuity unless sold to another investor in the secondary market. The investor therefore, possesses certain rights and privileges (such as to vote and hold position) in the company. Whereas the investors in debts may be entitled to interest which must be paid, the equity holder receives dividends which may or may not be declared. The risk factor in this instrument is high and thus yields a higher returns (when successful). Holders of this instrument however, rank bottom on the scale of preference in the event or liquidation of a company as they are considered owners of the company.

Derivatives instruments are derive from other securities which are referred to as underlying asset (as the derivative is derived from them). The price, riskiness and function of the derivative depend on the underlying asset since whatever affects the underlying must affect the derivative. The derivative might be asset, index or even situation. Derivatives are mostly common in developed economies. Some examples of derivatives are: mortgaged – Backed Securities (MBS); Asset Backed Securities (ABS); Futures; Options; Swaps; Rights; and Exchanged Traded Funds or Commodities. Of all the above stated derivatives, the common one in Nigeria is Rights whereby the holder of an existing security gets the opportunity to acquire additional quality to his holding in an allocated ratio.

Preference shares is issued by corporate bodies and the investors rank second (after bond holders) on the scale of preference when a company goes under. The instrument possesses the characteristic of equity in the sense that when the authorized share capital and paid up capital are being calculated, they are added to equity capital to arrive at the total. Preference shares can also be treated as a debt instrument as they do not confer voting rights on its holders and have a dividend payment that is structured like interest (coupon) paid for bond issued.

Preference share may be:

a. irredeemable Convertible

b. Irredeemable, Non-Convertible

c. Redeemable.

In irredeemable Convertible, upon maturity of the instrument, the principal sum being returned to the investor is converted to equities even though dividend (interest) had earlier been paid;

In the case Irredeemable, Non-Convertible, the holder can only sell his holding in the secondary market as the contract will always be rolled over upon maturity. The instrument will also not be converted to equities;

In Redeemable, the principal sum is repaid at the end of a specified period. In this case, it is treated strictly as a debt instrument.

It is worthy to note that interest may be cumulative, flexible or fixed depending on the agreement in the Trust Deed. A Trust Deed is a document that states the terms of a contract. It is held in trust by the trustee.[25]

1.3 A Brief History of the Nigerian Capital Market

The birth of the Nigerian Capital Market could be traced to the colonial administration when the colonial British Government sought funds for running the local administration.[26] At that time, most of these funds were derived from agricultural produce, marketing and social mineral mining. The Colonial Administrators later discovered that these sources were grossly inadequate to meet their growing financial obligations. Hence, the need for them to expand their revenue base by raising funds from the public sector. This now necessitates the setting up of the basic infrastructure for its take off pending the development of an organized private sector.[27]

By the year 1957, the Government and Other Securities (Local Trustees Powers) Act was enacted, it spelt out the types of securities in which trust funds may be invested. It also defined the powers and responsibilities of trustees. It is this same year that the colonial government set up the Professor Barback Committee to examine the ways and means of fostering a share market in Nigeria. The terms of reference of this committee among others include the possibility of establishing a capital market in Nigeria. Part of the recommendations of the committee included the creation of facilities for dealing in shares, establishment of rules regulating shares transfer and measures for encouraging savings and issues of securities of the government and other organizations.[28]

In line with the recommendation of the Barback Committee, the General Loan and Stock Act and Local Loans (Registered Stock and Securities) Act were promulgated towards the end of the year 1957.[29] However, following the establishment of the Central Bank of Nigeria in 1958 through the Central Bank of Nigeria Act 1958, it was logical to have a Stock Exchange, hence the incorporation of the then Lagos Stock Exchange in 1960.[30]

Trading commenced in 1961 after the enactment of the Lagos Stock Exchange Act of 1961. The Self-Regulatory body was subsequently re-organized and renamed as the Nigerian Stock Exchange in 1977. The Exchange now has branches in Lagos, Kaduna (1978), Port Harcourt (1980), Kano

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25 Instruments traded in the Capital Market <http://sec.gov.ng/instrument_traded_in_thecapital_market1> Accessed on 22nd September, 2017.

26 E.B. Osaze. *Capital Market – African & Global* (Lagos: The Book House Company, 2007), p. 55.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

(1989), Onitsha (1990), Ibadan (1990), Abuja (1999), Yola (2002), Benin (2005) and Ilorin (2008).[31]

1.4 Taxation of the Nigeria Capital Market on Value Added Tax

Value Added Tax (VAT) is a different type of tax and it is charged and payable on the supply of all goods and services other than those exempted and listed in schedule 1 of the *Value Added Tax Act.*[32] Value Added Tax is a consumption tax on all taxable goods and services payable by any consumer including companies, firms, agencies and individuals.[33] The consumer is liable to the tax exemption from this not aimed at agencies, companies or individuals but rather at the goods and services.[34]

Therefore all agencies of government, religious and other organizations and similar persons that are normally exempted from income tax are expected to pay Value Added Tax on the goods and services consumed by them except where the goods and services are specifically exempted by law.[35]

Value Added Tax at the primary market is imposed as follows:

i. Every consumer Pays Value Added Tax on services rendered to it at the primary market. As consumers of services rendered by both the issuing Houses and other parties to the issue, the issuing companies are liable to the payment of Value Added Tax for the services rendered. The issuing Houses and other parties to the issue should charge Value Added Tax at 5% on their invoices for services rendered. Since the issuing Houses handle the transactions connected with new and right issues, they are to act as agents for the collection and remission of Value Added Tax to FIRS;

ii. As a pre-requisite for listing new securities by Nigerian Stock Exchange (NSE), the evidence of settlement of WHT and VAT on the new and right issues must be attached. The listing fees are themselves liable to WHT and VAT; and

iii. Before an operator's licence is renewed by the regulatory authority, evidence of WHT and VAT on issues handled in the previous year must be produced.[36]

On the other hand, Value Added Tax is imposed on the secondary market in both purchase and sale transactions and the consumer of the services rendered is the investor. It is, therefore, the investor that suffers the incidence of this tax. The VAT on these transactions (sale and purchase) should be paid over to FIRS.[37]

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[31] Odife Dennis. "The Evolution of the Nigerian Capital Market and the Present Reforms" (Paper presented at the Abuja Conference on Legislation for the Capital Market, Abuja) 2000; Hafsat Iyabo Sa'adu. "An Analysis of Taxation of Capital Market Transactions in Nigeria" in Oyesola Animashaun, O.Y Abdul – Hamed, Bimbo Atitola. *Changing Perspectives in the Law and Practice of Taxation in Nigeria.* Essays in Honour of Professor M.T Abdulrazaq (Lagos: Hybrid Consult and College of Law, Kwara State University, 2017), pp. 470 – 471.

[32] See Section 2 of Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria 2004.

[33] M.T. Abdulrazaq. *Revenue Law and Practice in Nigeria* (Lagos: Malthouse Press Limited, 2010), p. 273 and Sanni Abiola. "Tax Reform in the Capital Market – A Welcome Development" (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta), 2007, p. 18.

[34] Federal Inland Revenue Services (FIRS) Information Circular No. 9903 of 1st July 1999.

[35] Ibid. (See further Value Added Tax (Exemption of Commission on Stock Exchange Transactions) Order 2014 issued on 30th July 2014 by the then Finance Minister Dr. Ngozi Okonjo – Iweala to amend the "Service Exempt" from Value Added Tax (VAT) to include commissions on transactions in the Nigeria Capital Market. The Exemption Order is effective from 25 July 2014 and it is applicable for a period of 5 years from commencement.

[36] Ibid.

[37] Ibid.

The mode of collection of VAT in the Nigerian Capital market are:

i. The rate of VAT is 5%;
ii. Payment of VAT should be made in bank draft and payable to 'the Federal Government of Nigeria – FIRS-VAT Account'; and
iii. Payment should be accompanied by the VAT form 022. The policy of Government imposes on the Issuing Houses the role of agent of government for the collection and remittance of VAT in respect of their own respective transactions which ordinarily should have been paid over to the operator who charged the VAT on his invoice.[38]

1.5 The Charge of Double Taxation and Capital Market Operation in Nigeria

As far as operation of capital market is concerned, double taxation is referred to tax that is levied on the income of the company in its hands (in its corporate name) and thereafter the dividends and other distributions made to shareholders out of the profits are again subjected to tax in the shareholders hands as their personal income. This is the situation where the taxation of the income of companies is based on the classical theory of taxation.[39]

The operators in the Nigerian capital market have been complaining of double taxation and multiplicity of fees and strictly speaking, the description above does not amount to double taxation. Double taxation is a well-established concept in the international taxation. Double taxation at the intra national level occurs where the same income or piece of property is subject to tax twice or more in the hands of the same taxpayer by the same tax authority. Therefore, since a company is a distinct and separate person from its shareholders, the taxation of income of a company cannot be said to be the same with taxation of the income of the shareholders. The classical theory of taxation of companies views company's income tax as part of the price paid for the privileges of incorporation. An investor who desires to avoid paying companies income tax has a choice of carrying on business either as a sole proprietor or partnership.[40]

The imputation theory however, though, taxes the profits of a company in its hand but allows, on distribution, a portion of the companies income tax already paid to be imputed to the income tax liability of the shareholders.[41] In this circumstance, a shareholder will be given credit for the tax already deducted under the companies income tax. The imputation system is well – grounded in the European Union.[42]

In view of the advantage of the imputation model, it may be worthwhile for the operators in the capital market to advocate for the imputation model instead of seeking for direct elimination of

[38] See Paragraph 4 of the Federal Inland Revenue Services (FIRS) Information Circular No. 9502 of 29th February 1995; Hafsat Iyabo Sa'adu. "An Analysis of Taxation of Capital Market Transactions in Nigeria" in Oyesola Animashaun, O.Y Abdul – Hamed, Bimbo Atitola. *Changing Perspectives in the Law and Practice of Taxation in Nigeria.* Essays in Honour of Professor M.T Abdulrazaq (Lagos: Hybrid Consult and College of Law, Kwara State University, 2017), pp. 490 – 492.

[39] Sanni Abiola. "Tax Reform in the Capital Market – A Welcome Development (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007, pp. 16 – 17.

[40] Ibid, p. 17.

[41] Ibid.

[42] Ibid.

taxation of company or dividends. But there is the need to be careful of its implications on the earning of the government(s) and inter-government fiscal relations.[43]

1.6 Effect of Global Financial Meltdown on the Taxation of the Nigeria Capital Market on Value Added Tax

The global financial meltdown is a topical issue because it seems to have affected many countries all over the world. It has various implications for both the developed and developing economies. In the case of the developing countries of which Nigeria is one, the implications are noticeable in the areas of crash in shares prices, dwindling government revenues, massive reduction in capital inflows, followed by Divestment (FDI, Portfolio, ODA, remittances etc.) leading to a crash of the Nigerian Stock Market. The demand pressure on the forex market arising from divestment and repatriation of capital and dividends by foreign investors intensified in the face of falling revenue.[44] This resulted in the de-accumulation of foreign reserves and pressures on exchange rate, hence naira depreciation. Greater forex outflows also mean liquidity mop-up and tightness of liquidity in the financial system, combined with greatly reduced rate of monetization of forex inflows from oil sales. All this would lead to higher government borrowing which would reduce credit to the private sector.[45]

The global financial meltdown has much to do with the crash of stock/share prices in the various stock exchange markets of countries including Nigeria. The problem is that once the companies publicly declare the state of their insolvency and the huge losses experienced by them, the investors' confidence was eroded. The result was a stampede where both the small and large investors wanted to offload their shares in the market. In line with the principle of demand and supply, as more shares are offloaded into the market, the prices dropped as far as investors showed interest in investing.[46] This will eventually have serious effect on the tax that is levied on the income of the companies and the dividends and other distributions made to shareholders out of the profits of companies.

It is important to note that the global financial meltdown has greatly affected investment mobility as in taxation of value added tax. The reason is not far-fetched, the unstable liquidity in the market has resulted in a serious effect concerning revenue generation of the government of Nigeria.

1.7 Conclusion and Recommendations

The paper has made a chronicle of Taxation of Capital Market in Nigeria. It is found that taxation of capital market in Nigeria involves different categories of tax which include value added tax. As far as Value Added Tax is concerned, the burden of VAT being a consumption tax is borne by the consumers of various services that make the capital market operation who invariably are the users of funds (companies and government).

Regarding the charge of Double Taxation and Capital Market Operation in Nigeria, a company is viewed as a distinct and separate person from its shareholders, the taxation of income of a company cannot be said to be the same with taxation of the income of the shareholders. The rationale behind

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[43] Ibid.

[44] The Stockwatch Nigeria May 18 2009, p. 31.

[45] Ibid.

[46] N.G Nwokah et al. "Global Financial Melt Down and Implications for Marketing in Nigeria" (2009) Issue II *Journal of Money, Investment and Banking.* <http://www.eurojournals.com/JMTB.htsm> accessed on 23rd July, 2018.

this is that the classical theory of taxation of companies views company's income tax as part of the price paid for the income tax has a choice of carrying on business either as a sole proprietor or partnership.[47] Therefore the above description does not amount to double taxation as far as the capital market is concerned.

The global financial meltdown has various implications for both the developed and developing economies but the impact is greatly felt in the developing economy of which Nigeria is one. This is noticeable in areas of crash in share prices, dwindling government revenue, massive reduction in capital inflows followed by divestment leading to a crash of the Nigerian Capital Market. The problem is that once the companies publicly declare the state of their insolvency and the huge losses experienced by them, the investors' confidence was eroded. This will lead to stampede where both the small and large investors wanted to offload their shares in the market. As more shares are offloaded into the market, the prices dropped and this will have serious effect on the tax that is levied on the income of the companies and the dividends and other distributions made to shareholders out of the profits of companies. The recession has greatly affected taxation of value added tax. Of course the unstable liquidity in the market has resulted in a serious effect concerning revenue generation of the government of Nigeria.
As part of the measures to stabilize the Nigerian Stock Market:

a. There is need for education of shareholders (investors) in Nigeria to appreciate the price movements. It cannot be one way positive, sometimes prices could drop with the tendency to move up later.
b. The Central Bank of Nigeria should continue to monitor the level of liquidity in the system so as to maintain a reasonable balance of cash flow in the economic system. The Securities and Exchange Commission (SEC) has responded to the crisis by the introduction of market markers to boost liquidity in the Nigerian Capital Market.
c. Government should develop mechanism that will support sensitive companies that could face financial crisis as in the case with some developed countries.

Finally, it can be observed that tax issues on capital market operation in Nigeria are more relevant to the FIRS than SBIR.

[47] Ibid, p. 17.