

LEGISLATION AND THE ADMINISTRATION OF TAXATION OF CO-OPERATIVE SOCIETIES: DRAWING AN INTERSECTION FOR SUSTAINABLE DEVELOPMENT

Ajibola Anthony Akanji¹

Abstract

Nigerian co-operatives are enabled by both national and subnational legislation. *Section 20 (1) and (2) Nigerian Co-operative Societies Act, (NCSA) CAP. N98*, exempts societies from the payment of stamp duties chargeable under the *Stamp Duties Act CAP. S8*. *Section 23 (1) (b) of the Companies Income Tax Act, CAP. C21* and *Section 26 (1) (c) of the Capital Gains Act, CAP. C1* exempts societies from taxation of profits and gains. Current statistics show that co-operatives are more likely to possess characteristics of community organizations than commercial enterprises, with the consequence that their potential is sub-optimally utilized. There is a need for an appraisal of the specified circumstances in conjunction with some elements of their enabling legislation. The exemption from taxation is identified as a drawback in the implementation of the sustainable development agenda. This points to the need to integrate elements of company law into co-operative legislation to remedy the identified deficiencies.

Keywords: Companization, Co-operative legislation, Nigerian co-operatives, Sustainable development, Taxation.

1. Introduction

The origin of modern co-operatives in Nigeria is traced to the work of C.F Strickland, an expert in co-operatives who was commissioned in 1934 by the British colonial government of Nigeria to undertake a feasibility study on the viability of introducing modern co-operative practices into Nigeria. Strickland's findings were presented to the colonial government in his 1934 Report.² This led to the adoption of modern co-operatives in Nigeria, and the promulgation of the Co-operative Societies Ordinance of 1935.³ The Ordinance was modeled on the Indian Co-operative

¹ Faculty of Law, Lead City University, Ibadan, akanjiajibola16@yahoo.com

² For this major work, see Strickland C.F. "The Co-operative Society as an Instrument of Economic and Social Construction" *International Labour Review*, Vol. 37, 1938 pp 729 – 753.

³ The Co-operative Ordinance of 1935 is not available. However, learned authorities such as E.T Yebisi posits in several of their works that it was modelled after the Indian Co-operative Act of 1904 and its provisions form the background to current Nigerian legislation on co-operatives

Act of 1904 as amended in 1912.⁴ The sub-division of Nigeria into semi-autonomous regions and later, into thirty-six states, meant that each region or state was at liberty to adopt co-operative legislation that was suited to its environment.⁵ This led to various adaptations of the existing Co-operative Ordinance of 1935.⁶ Co-operative law is currently in the concurrent legislative list of the Constitution of the Federal Republic of Nigeria, 1999. This means that both the National Assembly, and each of the 36 State Houses of Assembly can legislate on co-operatives and allied matters. However, the application of the constitutional doctrine of “covering the field”, that is currently enshrined in the Nigerian constitution, means that if a provision of legislation of a State House of Assembly is contrary to an Act of the National Assembly, the provision of the state law shall be declared null and void to the extent of its inconsistency with the National Act.⁷

The subnational legislatures within the Nigerian federation are often willing to adopt Acts of the National Assembly but are reluctant to tinker with the provisions of the adopted Acts. In some circumstances, this hinders state legislation from integrating local peculiarities into its provisions. This is the current situation with co-operative legislation in Nigeria. The prevailing situation requires an examination of tax administration and management through the lens of co-operatives and their governing laws, particularly the Nigerian Co-operative Societies Act (NCSA),⁸ and allied Nigerian legislation.

Section 20(1) (2) and section 21(a)(b)(c)(d) of the NCSA exempts co-operative societies from certain duties, fees, taxes and the compulsory registration of certain instruments.⁹ This does not defeat the provision of section 23 (1)(b) of the Companies Income Tax Act Cap C21, Laws of the Federation of Nigeria, 2004 and section 19 (1) paragraph 22 of the Third Schedule of the Personal Income Tax Amendment Act, 2011 which provides that co-operatives are required to pay tax on profit realized from businesses outside co-operatives activities.

The express provisions of these sections capture the intention of the National Assembly to cover the field on the taxation of co-operative societies in Nigeria. Co-operative practitioners argue that tax exemptions confine Nigerian co-operatives to social groups or non-governmental charitable organizations, rather than business-oriented ventures. The implication is that Nigerian co-operatives are neither statutorily nor administratively suited to undertake significant entrepreneurship. This argument has some validity when it is noted that even petty traders are required by statute to pay taxes¹⁰.

Current Nigerian co-operative legislation has the following accrued impacts:

⁴ E. T Yebisi (2014), “The Nigerian Co-operative Societies Act, 2004: A Bridge Still Far? Asian Journal of Humanities and Social Sciences. Vol.2. Issues 2

⁵ Constitution of the Federal Republic of Nigeria, 1999, 2nd Schedule Pt II as amended.

⁶ E.T Yebisi (supra).

⁷ Constitution of the Federal Republic of Nigeria, 1999, section 4(5) as amended.

⁸ Nigerian Co-operatives Societies Act, Cap. N98, Laws of the Federation of Nigeria, 2004.

⁹ Nigerian Co-operatives Societies Act (supra)

¹⁰ Constitution of the Federal Republic of Nigeria, 1999, Fourth Schedule. Which empowers the third-tier government in Nigeria; the Local Government to collect tax from petty traders within its territory.

- (a) Nigerian laws do not classify or empower co-operatives to operate as commercial entities; and
- (b) Nigerian co-operative societies, as currently administered, are more often social and community organizations.

The Nigerian political class prefers to deal with co-operatives in the same manner as they were dealt with under British colonial rule, a position that compounds the identified challenges. This creates a dilemma that further disempowers the Nigerian co-operative movement. Co-operatives are not equipped to function properly as commercial businesses or as social organizations. The dilemma is consistent with Hagen Henry's 2005 quote: *"it is strange that it is easy to obtain funds for projects and programs dealing with human rights, democracy and the rule of law in abstract terms, whereas no money is made available for the development of genuine co-operatives, which are practical realization of these aims."*¹¹

Nigerian co-operative societies, across the cadre of the co-operative movement, find it difficult to obtain funds for projects and programs that build capacity to support business growth and development. A major reason is the perpetual exemption from taxes, which situates them as neither profitmaking nor non-profit making associations. The exemption disempowers the co-operative movement and prevents them from contributing optimally to the sustainable development of the country. Consequently, they do not fit into the framework of the International Co-operative Alliance (ICA), and the United Nations Development Programme (UNDP) on the role of co-operative societies in actualizing the Sustainable Development Goals (SDGSs).¹²

Against this background, this paper examines the effects of the interplay of Nigerian legislation on the taxation of co-operative societies and the sustainable development of the country. Attempts are made to identify the various effects on both co-operatives and the country. Recommendations are made to address the identified deficiencies.

2. Nature of Nigerian co-operative societies and their legislative framework

There are primary, secondary, and tertiary co-operative societies in Nigeria. The number of primary co-operative societies in Nigeria ranges between 700,000 to 1,100,000 million.¹³ This figure includes both registered and unregistered societies. The emphasis in this paper is on registered co-operatives. All the known Nigerian secondary co-operatives, and the few tertiary

¹¹ Henry, Hagen 2005: Co-operative Societies Act, India 1904 – A Model for Development Lawyers? A Worldwide Applied Model of Co-operative Legislation. ICA, Asia Pacific, New Delhi, pp 164 – 200.

¹² Micheal E. Gertler, (2004) "Synergy and Strategic Advantages: Cooperatives and Sustainable Development" Journal of Cooperatives. Vol. 18, Issue 15.

¹³ Akanji, Ajibola. A (2020) The Poverty Challenge in Africa: Innovative Cooperativism Through Political Incentives. A case study of Nigeria. Journal Cooperativismoy Desarrollo, Universidad Cooperativa de Colombia.

co-operatives are registered.¹⁴ The Co-operative Federation of Nigeria, the Odu'a Co-operative Conglomerate Limited, and the Nigerian National Petroleum Corporation (NNPC) Co-operative Multipurpose Society are the three tertiary co-operative societies that are registered with the International Co-operative Alliance (ICA).

Nigerian co-operative societies have their origins in the cultural practices of her people. These customary practices have been upheld by the people of Nigeria from time immemorial.¹⁵ These practices survive to date, not only in form but in substance. In traditional Nigerian societies, co-operative associations drew their membership from the peasants, and the middle class, for socioeconomic survival, growth, and development. Rarely was membership drawn from the elite class of society whose participation was restricted to co-operative security outfits. The customary co-operative background still sustains its hold on the lower and middle classes, but the characteristics of the upper class has been modified.

The modern co-operatives that began shortly before the Strickland Report of 1934, and were predominantly organized solidarities of peasants, medium scale farmers, and allied workers, who had organized themselves in protest to the low prices being offered for their farm produce. The low prices were offered by the merchant buyers such as United African Company, John Holt, and Lever Brothers.¹⁶ The colonial government had a huge stake in these merchant buyers and supported them with state apparatus. In response, farmer's association such as the Agege Planters Union formed co-operatives.¹⁷ The activities of these co-operatives were a form of economic rebellion against the interests of the colonial government that brought about the Ordinance of 1935. These co-operatives did survive the Ordinance of 1935, but did not retain their original character. After the Ordinance, low- and medium-income earners from both the informal and formal sectors started joining existing co-operatives or formed new ones. The elite class were not known to have participated in co-operative societies through active membership. Rather, they utilized co-operatives to suit their economic, social, and political agenda.¹⁸ Although times have changed, these characteristics have survived. Currently, most Nigerian primary co-operative societies draw their membership from the lower and middle rung of the socio-economic ladder. Few members are drawn from the elite class.¹⁹ The Nigerian co-operative movement was harnessed by the elite class in both the public and private sectors, for their own

¹⁴ In Nigeria, primary cooperative societies are expected to be registered at the State Department of Cooperatives. A secondary cooperative society could be registered either at the State or Federal Cooperative Department. A tertiary or apex cooperative society must be registered with the Federal Department of Cooperatives.

¹⁵ Nigeria has about 250 ethnic nationalities. Each of these nationalities has its unique language and customary practices. The predominant ethnic nationalities are Hausa, Ibo, and Yoruba.

¹⁶ Mohammed S. Bello "Frosty Relationship Among Stakeholders: A Major Impediment to Cooperative Development in South-West Nigeria". Text of Presentation at the Cooperative Stakeholders Retreat 2021, Akure, Ondo State, Nigeria. 25th to 28th March 2021.

¹⁷ According to Mohammed S. Bello (supra). The Agege Planters Union was formed in 1907 by a group of cocoa farmers in an area in present day Lagos State.

¹⁸ Such was the approach of the late Chief Akinpelu Obisesan, a prominent cocoa farmer during the pre and post Strickland C.F Report of 1934, who also enjoyed a prosperous cocoa business till into the 1970s. He had during these periods formed many farmer's cooperatives to support his business. His disposition at utilizing cooperatives was adopted by other frontline businessmen of the era. Some of these are late Chief Samuel Adeloje, Chief Elijah Olatunde etc.

¹⁹ Olusoji A.T. *Esusu System (Ajo), Problems and Prospect*. Ibadan, Ogidiolu Publishers, 1996.

economic, social and political gain. This situation draws its roots from the Nigerian Co-operative Ordinance of 1935. The Ordinance was passed at the instance of the British colonialist, and did not come from the Nigerian co-operatives, or from Nigerians. British colonialism was skewed to the benefit of the colonialist. Consequently, the governing frameworks were structured to promote British interests and the Co-operative Ordinance was not an exception.

The colonial government would not have made a law to empower co-operatives at a time of growing nationalism in Nigeria. The growing nationalism in Nigeria coincided with a time when the British government was taking action against the spread of Marxism in Britain. At that time, co-operatives based on the Rochdale Pioneers' model were considered by some sections of the British elite, to be a drift towards communalism.²⁰ The state was mobilized against co-operatives in Britain. The approach to colonial co-operatives adopted by Britain was replicated in Nigeria through the 1935 Ordinance. Opportunities to reverse this tide were lost under colonial governments and upon self-rule.

The very first Nigerian co-operative legislation came about through the regionalization of the country in the 1950s. Regionalization empowered each of the three regions to pass legislation, and this included legislation on co-operatives. Ironically, the core sections of the 1935 Ordinance were retained by the legislatures in each of the three regions.²¹ A striking feature of some co-operative laws still in use in Nigeria, is that they retain some of the core provisions of the 1935 Ordinance.²² The survival of the core provisions of the 1935 Ordinance is evidence that there is a substantial resemblance between the interests of the colonialists, and those of the Nigerian political class under self-rule. The interest of the elite classes in the two periods were bourgeoisie, and the interactions between the two classes is synonymous with class subordination of the less privileged by the privileged. This has largely confined Nigerian co-operatives to a corner, so that the governing laws are "dictated" by the elite class, for their own pecuniary benefit.

3. Taxation and Nigerian co-operative societies

The Constitution of the Federal Republic of Nigeria 1999, provides, *inter alia* "it is a duty of every Nigerian citizen to declare his income honestly to appropriate and lawful agencies, and also to pay his tax as and when due."²³ This provision sets the legal foundation for taxation in Nigeria. The Nigerian tax system is made up of tax law, tax policies and administration. The framework of Nigerian taxation, as enshrined in the constitution, conforms to the widely held principle across virtually all jurisdictions, that taxation must be authorized by the legislature,

²⁰ G.D.H Cole (1951) "The British Co-operative Movement in a Socialist Society" Republished May 2020 by Routledge.

²¹ E.T Yebisi (*supra*).

²² See the provisions of the Co-operative Societies Law of Oyo State, Co-operative Societies Law of Lagos State. Co-operative Societies Law of Ogun State etc.

²³ Section 24 (f), Constitution of the Federal Republic of Nigeria, 1999

through an enabling statute. Accordingly, the constitution legislates against arbitrariness in the interpretation and administration of taxation law in Nigeria.

It is important to reemphasize some provisions of the NCSA,²⁴ quoted verbatim: *“all duties executed by or on behalf of a society or by any officer or member of a registered society, relating to the business of the society shall be exempted from stamp duties chargeable under the Stamp Duties Act,²⁵ and from registration fees payable under any law, relating to registration of instruments, for the time in force throughout the Federation. A registered society shall be exempted from payment of tax under section 26 of the Companies Income Tax Act (CITA),²⁶. Nothing in any law, for the time being in force, relating to the registration of instruments shall apply to:*

(a) any instrument relating to shares in a registered society notwithstanding that the assets of the society consist in whole or in part of immoveable property; or

(b) a debenture issued by a registered society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or immoveable property, except in so far as it entitles the holders to security afforded by a registered instrument whereby the society has mortgage, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of the debenture; or

(c) any endorsement upon or transfer of a debenture issued by the society; or

(d) a charge created in favour of a registered society by a member of that society in respect of a produce of his agriculture or his land”.

The above provisions exempt registered co-operatives from the payment of taxes in Nigeria. The supposed benefits include:

(a) exemption from the payment of 10% of gains realized upon disposal of a charitable asset in accordance with the Capital Gains Tax Act;²⁷

(b) exemption from the payment of 5% on the supply of goods and services in accordance with the provisions of the Value Added Tax Act;²⁸

²⁴ Section 20 (1) (2) and section 21 (a) (b) (c) (d) of the Nigerian Co-operative Societies Act, Cap N98, Laws of the Federation of Nigeria, 2004.

²⁵ Stamp Duties Act, Cap. S8, Laws of the Federation of Nigeria, 2004. It provides at section 4 that the Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments relating to matters executed between a company and an individual, group or body of individuals. While the state government 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.

²⁶ Section 26, Companies Income Tax Act Cap. C21. Laws of the Federation of Nigeria, 2004

²⁷ Capital Gains Tax Act Cap. C1 Laws of the Federation of Nigeria, 2004. It provides for the payment of ten per cent of the gains accruing to any person on a disposable asset.

²⁸ Value Added Tax Act Cap. VI Laws of Federation of Nigeria, 2004. It provides for the imposition and charging of value added tax on certain goods and services and provide for the administration of the tax and matters related thereto.

(c) exemption from the payment of 2% of assessable profits of a company in accordance with the Education Tax Act;²⁹ and

(d) exemption from the payment of the personal income tax in accordance with the Personal Income Tax Act.³⁰

Registered Nigerian Societies are further exempt from tax on the following documents:

(a) Lease Agreements.

(b) Mortgages; and

(c) Incorporation of Limited Liability Company (if they choose to incorporate one).

These exemptions are in accordance with the provisions of the NCSA and apply to taxes imposed by Stamp Duties legislation of each of the thirty-six states of the federation of Nigeria.³¹ These exemptions are laudable incentives that appear to support the upward mobility of the Nigerian co-operative movement. It is expected to position them as key players in the country's drive towards sustainable development. Despite these exemptions, the Nigerian co-operative movement is currently unable to compete favourably with its counterparts in other jurisdictions.³² This is even more interesting when the performance of the Nigerian co-operative movement is compared to their counterparts in other developing countries. In these countries, co-operatives are not exempt from taxation. This brings to the fore the following questions:

(a) Is the exemption from taxation beneficial to Nigerian co-operatives; and

(b) What is the way forward?

4. Has exemption from taxation benefitted Nigerian co-operatives?

To address this question, a questionnaire was distributed to one hundred and twenty randomly selected co-operative leaders and scholars. All respondents agreed that legislation exempting Nigerian co-operatives from taxation has not been beneficial to co-operative societies. Respondents have a diverse range of reservations about the impacts of the taxation regime on Nigerian co-operatives.

²⁹ Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004. It imposes an education tax on companies registered in Nigeria and to establish an Education Fund and a Board of Trustees to manage and administer the Fund. It is worthy of note, that the Nigerian Co-operative Societies Act (supra) makes provision for Education Fund.

³⁰ Personal Income Tax Act Cap. Laws of the Federation of Nigeria, 2004. It provides for the taxation of sole proprietorship and partnership businesses in Nigeria.

³¹ There Stamp Duties Act (supra) is a legislation of the Nigerian National Assembly. Each of the thirty-six states in Nigeria has in place a Stamp Duties Law, a legislation of the House of Assembly of each state.

³² For example, Kenya and India.

93 % of respondent agreed that while the law exempts co-operatives from taxation, in practice co-operatives pay some taxes. These taxes are collected directly by the Federal Inland Revenue Service (FIRS) or it authorized equivalent, within each of the 36 states of the federation.³³ 86% of respondents agree that there is a significant disparity between the provisions of laws on taxation of co-operatives and the practice of taxation. 87% of respondents agree that the inconsistency between the provisions of the law and the discharge of duties by tax officers are a reflection of the premium placed on co-operatives by the government and elite class, identified earlier in this paper. 86% of the respondents agree that the supposed benefit of the exemption from taxation was to enable co-operatives to make a significant contribution to the sustainable development of Nigeria. The same 86% agree that a substantial part of the envisaged gains from the exemption has not been met.

This seems consistent with the obligation for co-operatives to pay taxes on profit realized from businesses outside co-operative activities. However, the line between businesses that fall within the purview of co-operatives and those beyond is inexplicitly defined in the face of the realities of taxation.

5. Taxation and sustainable development

The concept of sustainable development has been well canvassed since the Brundtland Report of 1987.³⁴ It is about the reconciliation of current realities on socioeconomic and environmental survival, growth and development, with projections on survival, growth and development in the future. Sustainable development seeks to strike a balance between our current socio-economic and environmental needs and projected socio-economic and environmental challenges. It depends on the capacity of politicians to put in place the most appropriate public policy framework, that links the international, national, and local, along vertical and horizontal lines. The Sustainable Development Goals (SDGs) are an initiative of the United Nations Development Programme (UNDP).³⁵ One of the most frequently asked questions about the SDGs and the concept of sustainable development is about its financing.³⁶ Answers point to both public and private sources.³⁷

³³ The Federal Inland Revenue Service Act Cap. Laws of the Federation of Nigeria, 2004. It is a legislation of the National Assembly that empowers the Federal Inland Revenue Service (FIRS) to allocate and collect tax on behalf of the federal government of Nigeria. There is equivalent legislation at the subnational level (thirty-six states of the federation).

³⁴ Our Common Future (1987) Book by Brundtland Commission.

³⁵ <http://www.undp.org>

³⁶ Cathal Long and Mark Miller (2017), "Taxation and the Sustainable Development Goals: Do Good Things Come to Those Who Tax More?" Overseas Development Institute, London.

³⁷ Sanjeer Gupta and Jianhong Lie (2020) "Tax Revenue in Africa Will Be Insufficient to Finance Development Goals" Centre for Global Development. Accessed through: <https://www.cgdev.org>

In the case of Nigeria and many of the developing countries, the answer to the financing question lies substantially with public funding.³⁸ The development indices in Nigeria show that despite the government's claim that there is heavy spending on social overheads such as electricity, health, and education, development projects have not been adequately financed. This supports the assertion that the rent from the exploration and exportation of crude oil, the major source of public revenue in Nigeria, is not sufficient to finance its sustainable development. In Nigeria, taxation in its different forms is second to the petroleum industry in term of its generation of public revenue.³⁹ One of the striking features of public expenditure in Nigeria, is that it largely corresponds to the source of its taxation revenue. Geographical areas, and sectors, such as the petroleum industry, or the service industry, seem to benefit in proportion to their revenue contributions.

The link is drawn between taxation and sustainable development expenditure. The notion that public financing advantages taxpayers in proportion to their level of taxation was propounded by economist, Nicholas Kaldor.⁴⁰ Kaldor, wrote "whatever the prevailing ideology or political colour of a particular government, it must steadily expand a whole host of its services as a prerequisite for the country's development. These services must be financed out of government revenue. Besides meeting these needs, taxes provide the most appropriate instruments for increased savings for capital formation out of domestic sources". Kaldor's postulation is very relevant to current realities in Nigeria.

Cathal and Mark (2017), say that "There is growing interest in domestic resource mobilization for development".⁴¹ The authors identified some key messages from known initiatives on domestic resource mobilization:

- a. Linking the delivery of the SDGs to an increase in domestic resource mobilization is a good idea in principle. More taxation is associated with benefits beyond the finance it raises, including more accountable and effective institutions and more social spending.
- b. Some developing countries collect taxes at levels commensurate with their level of economic and institutional development. In many cases, these levels of tax collection are higher than the levels recorded in today's developed countries when they were at a similar level of development.
- c. Trying to squeeze too much tax out of the poorest economies has risks. High tax rates can impede private investment. Tax and spending policies are often regressive rather than progressive.

³⁸ Committee of Experts on International Cooperation in Tax Matters. Seventeenth session (2018). The Role of Taxation and Domestic Resource Mobilization in the Implementation of the Sustainable Development Goals. Accessed through: <https://www.un.org>

³⁹ According to the Institute of Chartered Accountants of Nigeria (ICAN), taxation in Nigeria can be classified as follows: Proportional tax, Progressive tax, Regressive tax, or Direct taxation and Indirect taxation, or rather appropriate taxation and tax incentives.

⁴⁰ Kaldor, N. (1963), Will Underdeveloped Countries Learn to Tax? *Journal of Foreign Affairs*. Vol. 41, Issues 2 pp. 410 - 419

⁴¹ Cathal, L. and Mark, M. (2017) *supra*.

- d. Blind adherence to a push for more taxation is likely to have adverse consequences unless the international community prioritizes support for better tax systems, rather than more tax collection. The two are not always compatible. Good things come to those who build tax systems that are compatible with economic growth.

These points capture the position that, although taxation could be subject to various challenges, it remains a core element in the drive for sustainable development. Importantly, it requires the government to put in place the most appropriate tax system for the state. In the Nigerian case, a tax exemption policy for co-operatives has outlived its usefulness.

6. The Nigeria state and taxation of co-operative societies

Countries from the global-south, such as Afghanistan, and El-Salvador, have devised ways of promoting the utilization of co-operatives for sustainable development without an outright exemption from taxation,⁴² but rather with tax incentives. This approach is embraced not only in the global south but also in the global north. India,⁴³ and the United States of America,⁴⁴ are examples of countries utilizing tax incentive policy for co-operatives and sustainable development.

According to VG. Alberto et al,⁴⁵ “Co-operatives are the most pronounced of all the social solidarity enterprises, they have been known to make significant contributions to the sustainable development agenda, their capacities to contribute to the sustainable development agenda however lies with the applicable tax regime in each country.” Although the conclusion was largely based on European co-operatives, the authors arrived at the following conclusions which are also relevant to the Nigerian situation:

- a. To support the work of co-operatives at playing improved roles in the drive towards sustainable development of society and state requires tax incentives and not tax exemption; and
- b. Such tax incentives must be based on the socio-economic functions of co-operatives and their intrinsic characteristics.

⁴² OECD (2014) “Supporting Countries in Growing Their Tax Base”. In Development Co-operation Report 2014: Mobilizing Resources for Sustainable Development. OECD Publishing, Paris, France.

⁴³ See Kalpataru Ghosh, Taxation of Cooperative Societies under Direct and Indirect Tax. Accessed through <https://taxguru.in>

⁴⁴ The Sub-T principle allows cooperative in the United States of America to deduct certain distribution of net income made to the members in addition to making deductions for expenses allowed other businesses. The distribution become taxable income to the members, with the effect that the net income is taxed only once. See Phil Kenkel (2019) Cooperative Taxation: Sub-Chapter T.

⁴⁵ Alberto Vaquero Garcia, Maria Bastida, Miguel Angel Vazquez Tain (2020), Tax Measure Promoting Cooperatives: A Fiscal Driver in The Context of the Sustainable Development Agenda. European Research on the Management and Business Economics. Vol.26, Issue 3, pp 127 – 133.

Tax incentives are not alien to Nigerian enterprises. They are regularly employed by the Nigerian government to support different sectors of the economy.⁴⁶ However, tax incentives in Nigeria have been substantially built around companization, and most often, on the provisions of the Companies and Allied Matters Act (CAMA) and the Companies Income Tax Act (CITA). Only entities registered as companies under the Companies and Allied Matters Act (*supra*) may benefit from such incentives.

Because incentives are centred on enterprises that are registered as companies, it raises some questions. For example, “must co-operatives be registered as companies to exit their current tax regime?” Nigerian co-operatives could become eligible to pay some degree of tax, and then benefit from tax incentives. The answer lies between the companization of co-operatives and retaining their specificities as co-operatives, harnessing some of the benefits of sole proprietorship, and partnership businesses, as enabled by the Personal Income Tax Act.⁴⁷

7. Conclusion and recommendations

Tax exemptions were initially made to promote Nigerian co-operatives and enhance their capacity to discharge their various functions. This initiative has lost its relevance in the face of current and projectable socio-economic realities. More compelling is the growing inability of Nigerian co-operative societies to optimize resources in their drive to actualize the sustainable development agenda. The situation in Nigeria shows that public policy places a premium on tax-paying entities, and less so on tax-exempt entities. The reconciliation of the two extremes of taxation and exemption lies in tax incentive. Tax incentives have the potential to promote Nigerian entities more than tax exemptions. This paper supports the abolition of the current tax exemption regime for Nigerian co-operatives, and substitutes it with tax incentives. The following is recommended:

- a. The Nigerian Co-operative Societies Act,⁴⁸ should be retained. However, the provisions that exempt co-operatives from taxation should be expunged.
- b. The Nigerian National Assembly should put in place a “Co-operative Societies Income Tax Act”, a legislation to reconcile the following:
 - (i) specificities of co-operatives,
 - (ii) relevant provisions of the Companies Income Tax Act,⁴⁹
 - (iii) relevant provisions of the Personal Income Tax Act,⁵⁰
 - (iv) relevant provisions of the Nigerian Export Promotion Act, and

⁴⁶ For example, the provisions of the Nigerian Export Promotion Council Act, and the Nigerian Free Trade Zone Act

⁴⁷ Personal Income Tax Act (*supra*)

⁴⁸ Nigerian Co-operative Societies Act (*supra*)

⁴⁹ Companies Income Tax Act (*supra*)

⁵⁰ Personal Income Tax Act (*supra*)

- (v) relevant provisions of other Nigerian and some foreign legislation, judicial pronouncement, opinions, and research outputs of learned authors that supports the promotion of tax incentives and the development of co-operatives.
- c. The Companies and Allied Matters Act,⁵¹ should be amended with a subsidiary legislation which shall enable Nigerian Co-operatives to be registered with the Corporate Affairs Commission (CAC),⁵² and also as co-operatives as provided by the Nigerian Co-operative Societies Act (supra).⁵³

The following is a list of some of the tax laws currently in force in Nigeria:

- a. *Federal Inland Revenue Service (Establishment) Act Cap. F36 Laws of the Federation of Nigeria, 2004*
- b. *Companies Income Tax Act (CITA) Cap. C21 Laws of the Federation of Nigeria, 2004*
- c. *Personal Income Tax Act (PITA) Cap. 8 Laws of the Federation of Nigeria, 2004 (as amended)*
- d. *Petroleum Profits Tax Act (PPTA) Cap. 13 Laws of the Federation of Nigeria, 2004*
- e. *Deep Offshore and Inland Basin Production Sharing Contracts Act Cap. D3 Laws of the Federation of Nigeria, 2004.*
- f. *Value Added Tax Act (VATA) Cap. D1 Laws of the Federation Nigeria, 2004.*
- g. *Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004.*
- h. *Capital Gains Tax Act (CGT) Cap. C1 Laws of the Federation of Nigeria, 2004.*
- i. *Stamp Duties Act Cap. S8 Laws of the Federation of Nigeria, 2004.*
- j. *National Information Technology Development Agency Act Cap. N 156 Laws of the Federation of Nigeria 2004.*
- k. *Nigeria Liquified Natural Gas (Fiscal Incentives, Guarantees & Assurances) Act, Cap. N87. Laws of the Federation of Nigeria 2004.*
- l. *Industrial Development (Income Tax Relief) Act. Cap 17. Laws of the Federation of Nigeria, 2004*

⁵¹ Companies and Allied Matters Act (supra)

⁵² Section 1 of the Companies and Allied Matters Act (CAMA) establishes the Corporate Affairs Commission to among other administer CAMA including the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies under or pursuant to CAMA.

⁵³For example, Nigerian banks are primarily registered as public liability companies in accordance with the provisions of the Companies and Allied Matters Act (supra), thereafter registered as commercial bank with the Central Bank of Nigeria, in accordance with the provisions of the Central Bank of Nigeria Act.