DOUBLE TAXATION AGREEMENT AND THE IMPLICATIONS FOR INFLOW OF FOREIGN DIRECT INVESTMENT INTO NIGERIA

LLM Dissertation

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DECLARATION

I, FAMUYIWA OLARONKE OLUFUNBI, declare that the work presented in this dissertation is original. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements of the award of the degree of LLM in International Trade and Investment Law in Africa.

CERTIFICATION

I declare that this Mini-Dissertation which is hereby submitted for the award of Legum Magister (LL.M) in International Trade and Investment Law in Africa at International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria, is my original work and it has not been previously submitted for the award of a degree at this or any other tertiary institution.

Famuyiwa Olaronke Olufunbi

DEDICATION

I dedicate this work to GOD Almighty.

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LIST OF ACRONYMS

AGOA	**African Growth and Opportunity Act**
ALP	**Arm's Length Principle**
ASEAN	**Association of Southeast Asian Nations**
BEPS	**Base Erosion and Profit Shifting of Global Businesses**
BIT	**Bilateral Investment Treaties**
CCCTB	**Common Consolidated Corporate Tax Base**
DTT	**Double Taxation Treaties**
EU	**European Union**
FDI	**Foreign Direct Investment**
FI	**Foreign Investment**
FIRS	**Federal Inland Revenue Service**
FPI	**Foreign Portfolio Investment**
FSLE	**Functionally Separate Legal Entity**
GATT	**General Agreement on Tariffs and Trade**
GATS	**General Agreement on Trade in Services**
GDP	**Gross Domestic Product**
GLP	**Global Formulatory Appointment**
GSM	**Global System for Mobile Communication**
MTC	**Model Tax Convention**
MTN	**Mobile Telephone Network**
NIPC	**Nigerian Investment Promotion Commission**
NTP	**National Tax Policy**
OECD	**Organization for Economic Cooperation and Development**
SEZ	**Special Economic Zones**
UAE	**United Arab Emirates**
UK	**United Kingdom**
UNCTAD	**United Nations Conference on Trade and Development**
UN	**United Nations**
USD	**United State Dollar**

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ABSTRACT

This mini-dissertation titled 'Double taxation agreement and the implications for the inflow of foreign direct investment into Nigeria' will discuss the concept of foreign direct investment and its impact on the economic growth of host country and subsequently linking the inflow of foreign direct investment to the availability of double taxation treaties.

The impact of foreign direct investment to host countries cannot be over emphasized. It amongst other improves the overall economic growth, creates access to international market, improve infrastructural facilities, creation of employment, transfer of technology and capacity building of citizens. The numerous benefits that accompany the inflow of FDI have made countries compete with each other in their efforts to attract foreign investment to their countries. The factors that contributes to the inflow of FDI are numerous, they include; friendly investment policies, ease of doing business regulations, economic and political stability, absence of corruption, tax incentives to mention a few.

Despite all the advantages of foreign investment and the several factors put in place by countries to attract it, the menace of double taxation remains its greatest impediment. Double taxation occurs when an entity or individual is taxed on the same income by different countries at the same time. Double taxation is an impediment because it devours the main purpose for which an investor is investing which is to maximize profits

The problem of double taxation was resolved by the enactment of double taxation treaties between countries. These tax treaties are set of rules that guide the taxation of income between two countries. Since the evolution of double tax treaties, there have been limited international taxation conflicts.

Despite the fact that there are several factors that contribute to the inflow of FDI, this research argues that the availability of a double tax treaty is top on the list of factors and it is important for countries to enact them for a smooth cross-border transaction.

It is against the backdrop i.e. the impact of FDI inflow to economic growth and the availability of a double tax treaty as an important factor that this research proposes to the Nigeria government to focus on attracting more FDI into its country as a means to resolving its ongoing economic crisis and recession. Likewise, this research also proposes that Nigeria enact more double tax treaties as the current number of tax treaties in Nigeria is a far cry.

CHAPTER 1

INTRODUCTION

1.1 Background of study

The investment treaties[1] between countries usually contains broad or close ended definition of foreign investment depending on the sector of the economy the country desires to develop or expand. However, generally, 'Foreign investment involves the transfer of tangible or intangible assets from one country to another for their use in that country to generate wealth under the total or partial control of the owner of the assets'[2].

In plain terms foreign investment are cross border transactions i.e. transactions that comprises of two or more entities or countries often refer to as foreign investors. There are two forms of foreign investment which an investor can choose from. An investor can either choose the foreign portfolio investment method or the foreign direct investment form. 'Foreign portfolio investment (FPI) is the movement of money for purchasing of shares of a company functioning in another country'[3]. This means there is no direct management role for the owner of such shares and the physical presence of the owner is not required. This form of investment allows the investor to carry out transactions without being physically present in the country of purchase. Often in Nigeria, this happens in the form of shares, debentures, stocks or bond purchase. However, foreign direct investment (FDI) on the other hand is the transfer of physical property such as equipment that is bought or constructed such as plantations or manufacturing plants[4] from one country to another for the purpose of generating wealth.

In the case of FDI, the physical present of the investor is one of its paramount features. This is because of the numerous advantages to the country hosting the investment, usually called the host country. Both the Foreign portfolio investment and foreign direct investment have always made significant contributions to the economic growth, but more importantly, there has been a greater focus on foreign direct investment because it benefits both the investors and the country being invested in. In the findings of the Organization for Economic Cooperation and Development (OECD) it was stated that, FDI is a key driver of international economic

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[1] The US Bilateral investment treaty gave a broad definition of foreign investment.
[2] M Sornarajah The International Law on Foreign Investment. (2010) 8.
[3] n 2 above.
[4] n 2 above

integration and a huge source of revenue generation to the host country[5], one can safely conclude that the higher focus on FDI is due to its revenue generation characteristics and several other features. For a crystal understanding of the impact of FDI to the host country, the under listed are some of its significant contributions to the host country:

- Source of capital as they earn taxes and boast its economy
- Employment generation,
- Facilitation of access to foreign markets
- Transfer of technological skills
- Infrastructural development.
- Capacity building of host country
- Spillovers to local firms[6].
- Motivates the reform of investment policies in host countries
- Generate fiscal revenues especially in taxation and export[7]
- It creates healthy competition between foreign and local investors[8]

From the foregoing, it is apparent that the benefits the inflow of FDI will contribute to the economic growth of any country, Nigeria inclusive, cannot be over emphasized. It will increase the rate of economy development, creates employment, provides knowledge and skills transfer in the area of management and technology; facilitates local firms' access to international markets and finance; enhances international trade integration; facilitates human capital formation; provides avenues for risk and product diversification; encourages favourable competition among businesses and increases product diversity[9]and a lot more.

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[5] Organization of Economic Co-operation and Development (OECD), Benchmark Definition of Foreign Direct Investment. Fourth Edition, 2008.

[6] African Economic Research Consortium: SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Targets, Impacts and Potential. (2006).

[7] P Loungani & A Razin 'How beneficial is foreign direct investment for developing countries?' Finance and development, A quarterly magazine of the IMF, June 2001, Volume 38, No 2 http://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm (accessed 10 October 2017)

[8] OECD (2002) 'Foreign direct investment for development: Maximising benefits, minimising costs' OECD Publications: France https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf (accessed 10 October 2017)

[9] Tax Effect on Foreign Direct Investment 2008 https://www.oecd.org/investment/investment-policy/40152903.pdf (accessed on 18 April 2017)

Due to the advantages that accompanies the inflow of FDI into the host country, developing countries and even some developed countries are constantly enacting investment policies and incentives that are business friendly and, also creating an investment conducive environment for foreign investors.

Over time, one of the constant investment incentive provided to foreign investors are tax incentives which are usually documented in a Double Taxation Treaty. Although, the inflow of foreign direct investment is majorly attached to the availability of several factors such as political stability, economic stability, availability of infrastructure, advancement in technology, absence of tax to mention a few. However, the consistent incentive has been tax incentives offered to foreign investors. The consistency in tax incentive is targeted at the elimination of the possibility of a foreign investment being taxed twice on the same income. The case of being taxed twice on the same income is referred to as double taxation and is a disincentive to foreign investors. Due to the unacceptability of double taxation, countries enacted double taxation treaties to guide the taxation of foreign income.

In the words of taxation scholars, 'A double taxation treaty between two countries is a set of rules for the taxation of transactions and relationship between persons resident in the countries'[10].

The evolution of DTTs have been a solution to the issue of international taxation conflicts which arose because of cross border investment and the elimination of the possibility of multinational organization from being taxed twice on the same income..

Therefore, it is importance for a country to have a double taxation agreement with other countries to eliminate tax evasion on the part of multinational companies and to also ensure that these companies are not overly taxed twice which usually serves as a discouragement to foreign investor as their major aim is to maximize profit.

Nigeria, which is the focus of this research, has less than thirteen double tax agreements with other countries[11] which have been considered as a disincentive to the inflow of FDI to the economy. With the recent decline in the exportation of crude oil and the fall in the price of oil in Nigeria, alongside the intention of the government to diversify its economy,[12] the importance

[10] B Croome *et al,* 'Tax Law. An Introduction' (2013) 5

[11] CM Ojong et al 'Determinants of Foreign Direct Investment Inflow to Nigeria (2015) Journal of Humanities and Social Science 34-43

[12] Diversifying the Economy of Nigeria' The leadership 27 August 2016 http://leadership.ng/features/548102/diversifying-the-nigerian-economy (accessed on 1 May 2017)

of taxation and the enactment of more double taxation agreement at such a time as this, cannot be overstated.

It is against this backdrop that this research is discussing the implications of the absence of a double taxation agreement to the inflow of FDI for the growth of the Nigeria economy.

1.2 Problem statement

From the above, the contributions of FDI to the economic growth were elaborated, the impact of DTT as an incentive to the inflow of FDI was also established. Conclusively, the absence of a double taxation agreement is a disincentive to the inflow of FDI to the economy.

This research intends to emphasize the importance of attracting FDI into Nigeria as another means of economic development aside its usual focus on oil revenue. Nigeria has relied heavily on the exportation of crude oil as a way of generating revenue without attending to other important sectors such as agriculture, manufacturing, tourism taxation, real estate, FDI etc. However, there has been a recent decline in the exportation of crude oil and the fall in the price of oil, which has led to Nigeria seeking to diversify its economy from solely oil base to other sectors[13]. Therefore, this research proposes the attraction of more FDI into Nigeria as a means of diversification to contributes to its economic reform

From the importance of a double taxation treaty to the inflow of FDI as an incentive to assure foreign investors of the elimination of double taxation, it is apparent that attracting FDI into Nigeria comes with the task of enacting a double taxation agreement to provides foreign investors with security and stability about the issue of taxation in addition to the relief from being double taxed[14]. This seems to be a task Nigeria has not been focusing on and not ready to take upon them. This is because Nigeria has enacted double taxation agreements with only thirteen countries out of the hundred and ninety-five countries in the world since its independence.[15] The low number of DTTs Nigeria has with other countries has led to an unimpressive inflow of FDI into Nigeria especially the non-oil sector which remains the backbone of the economy and the catalyst for economic diversification.

The number is DTTs in Nigeria is substantially low for an economy which ranks as one of the largest in Africa. Compared to other countries such as Singapore, UAE, Canada who have over

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[13] Diversification of Nigeria Economy 'The Vangaurd Newspaper 16 April 2016' http://www.vanguardngr.com/2016/04/diversification-nigerias-economy-urgent-buhari/ (accessed 15 July 2017)

[14] E Neumayer, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' (2007), 43 Journal of Development Studies 8.

[15] Deloitte Nigeria 'Improved Double Tax Agreement in Nigeria: Any Reason for Delay' https://www2.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/improved-double-tax-arrangements-in-nigeria.html (accessed 12 April 2017).

100 double taxation agreements and whose economy have been thriving as a result of the inflow of FDI.

From the foregoing, Nigeria is saddled with task of partnering with other countries in the aspect of trade and investment and enacting a double tax agreement to attract more FDI to resuscitate its economy.

1.3 Research questions

The core research question to be answered in this study is: what are the implications of a double taxation agreement on the inflow of FDI into Nigeria?

In answering the broad question however, the following sub-questions will also be answered-

i. Which theories are relevant to this study?

ii. How important is FDI to economic growth of a nation?

iii. What is double taxation and what is the position of double taxation agreement under Nigerian jurisprudence?

iv. What are the implications of a double taxation agreement to the inflow of FDI into Nigeria?

v. Are there lessons for Nigeria to learn regarding double taxation agreement from other jurisdictions?

1.4 Thesis statement

The research argues that the presence of DTT is important to the inflow of FDI into Nigeria. While discussing in detail the benefits of having FDI in an economy alongside the factors that serves as an attraction for the inflow of FDI. The major factor for discussion is the enactment of a double taxation agreement which serves as a guiding document for all foreign investment transactions between two countries. However, other contributing factors will also be examined.

1.5 Justification

The federal government announced its desire to diversify its economy from solely oil to other forms of revenue generation due to the recent decline in sales of oil and the ongoing recession[16]. This research is necessary to expose Nigeria to the importance of focusing on foreign

[16] n 12 above, 13

investment and how it can contribute to the economy of Nigeria and help strengthens its currency which has lost its value due to recession.

It also enlightens the government of Nigeria on the importance of a double taxation agreement as an important incentive to encourage the inflow of foreign direct investment.

1.6 Literature review

There has been a few research and articles on the importance of a double tax treaties in increasing the inflow of foreign direct investment in Nigeria, this is an evidence that we do not pay attention to the importance of double tax agreement in Nigeria and this has necessitated the need for this research to elaborate on the importance of a double tax agreement in an economy.

Ajayi S.I in his book "Foreign Direct Investment in Sub-Saharan Africa: Origin, Target, Impact and Potential'' discussed the importance of FDI to the economy of Sub-Saharan Africa countries. He was of the opinion that FDI is one of the most dynamic international resource flows to developing countries. According to him, FDI is particularly important because it is a package of tangible and intangible assets and because firms deploying them are important players in the global economy.[17] His book emphasized the contribution of FDI to the economic growth and development in Africa. He also pointed out that tax incentives are part of the determinant factors that encourages the inflow of foreign direct investment amongst other factors.

Olawale Ogunkola and Afeikhena Jerome in their article: Foreign Direct Investment in Nigeria: Magnitude, Direction and Prospects, appraise the structure, trends and magnitudes of FDI in Nigeria with a view to ascertaining policy-induced changes in the structure. They discussed the policies Nigeria has put in place to attract FDI, the inconsistencies with the policies and the vigour with which these policies have been pursued. Essentially, they concluded that Nigeria has made little progress in attracting FDI which sounds paradoxical given that Nigeria has one of the biggest economies in the world. When related to the size of its economy, it becomes apparent that the volume of FDI received is rather small, hence, there is need for a proactive policy towards FDI that involves the upgrading of national laws and incentives that are in

[17] African Economic Research Consortium: SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Targets, Impacts and Potential. (2006).

conformity with international practices[18]. They both discussed the need for proactive factors to boost FDI, without considering double tax treaties as a major boost of FDI.

A 2005 study by Giovanni examined the impact of various macroeconomic and financial variables on cross-border merger and acquisition activities as a component of FDI over the period from 1990 to 1999, covering 193 countries, and found that a tax treaty is accompanied by increased cross-border acquisition activities.[19] Apparently, according to Giovanni, tax treaties are one of the major factors that encourage the inflow of cross-border acquisition.

Cornelius M, Okag Felix and Ogar Anthony in their article ''Determinant of Foreign Direct Investment Inflow to Nigeria'' stated that one of the major factor that affect foreign direct investment in Nigeria according to FDI experts have been identified as unfavourable and unstable taxation regime[20]. This means the absence of a favourable and stable tax treaties have been a limitation to the number of foreign investment inflow in Nigeria.

According to the OECD report on the ''Effect of Tax on Foreign Direct Investment'' A META-analysis of results submitted that the share of FDI that comprises real investment in physical capital is more responsive to taxes than other components of FDI and studies using more recent data are found to produce larger semi-end also, seeing elasticities, indicating that FDI is becoming more responsive to taxation over time.[21] This is the evidence of the fact that taxation under the DTT contributes to the inflow of FDI.

The National Tax Policy (NTP) of Nigeria identifies international and regional treaties as one of the ways of attracting foreign direct investments to Nigeria. Current statistics have shown that there is a positive correlation between DTT and the level of foreign direct investment inflow to Nigeria. It is therefore imperative that Nigeria leverages on its status as the largest economy in Africa and takes advantages of the benefits DTTs offer.[22]

Conclusively, this research will contribute to the ongoing assertion on the importance of a DTT to the inflow of FDI thereby stating the necessity for Nigeria to increase its DTT network in

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[18] O Ogunkola & A Jerome 'Foreign direct investment in Nigeria: Magnitude, Direction and Prospects' in SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Target, Impact and Potential (2006) 144-177

[19] J Giovanni, 'What Drives Capital Flows? The Case of Cross-border M&A Activity and Financial Deepening' (2005), 65 Journal of International Economics 1 127-149

[20] CM Ojong et al 'Determinants of Foreign Direct Investment Inflow to Nigeria (2015) Journal of Humanities and Social Science 3

[21] Tax Effect on Foreign Direct Investment 2008 https://www.oecd.org/investment/investmentpolicy/40152903.pdf (accessed on 18 April 2017)

[22] National Tax Guide of Nigeria 2013

order for to enhance its economy growth. The research will also state the importance of having a draft DTT that benefits Nigeria as host country.

1.7 Research methodology

This research will make use of the analytical, theoretical, descriptive, comparative and prescriptive approach by examining books, articles, journals, treaties, international laws, national legislation and internet source on the research topic.

It will also use the desktop research method, thereby sourcing for its material online for critical analysis for the establishment of this thesis.

1.8 Chapterization

Chapter one will be the introduction of this research. It will give a general overview of what the research is set to achieve and how it tends to achieve it. It will elaborate on the subject matter of the research, the research problems, research questions, literature review, research methodology, and definition of terms and give a breakdown of the chapters of the research.

Chapter two will discuss in brief the theoretical underpinnings relevant to this study

Chapter three will give an in-depth discussion on foreign investment, its definition, types, importance to the economy of a nation and its disadvantages. There are two types of foreign investment, however, this chapter will focus on FDI by elaborating its significant contributions to the economic growth and how it is a prominent sector to diversify into by Nigeria. This chapter will also carry out a comparative analysis of the inflow of FDI to Dubai and Singapore as countries that have used the inflow of FDI as a tool of economic growth and also drawing lessons from their laws as benchmark for Nigeria.

Chapter four will examine the definition of taxation and its importance as one of the highest means of revenue generation for a country. This chapter will subsequently analyse the importance of having a double taxation agreement with other countries to avoid foreign investment from being taxed twice on the same income. It will also examine the position of the double taxation treaties under the Nigeria jurisprudence.

Chapter five will discuss the interface between the presence of a double taxation agreement and the inflow of foreign direct investment by examining how the absence of a double tax agreement has affected the inflow of foreign investment generally and especially in Nigeria.

Also, it will examine Nigeria's DTT and the need to amend. It will also debate the amendment of section 12 of the constitution of the federal republic of Nigeria which has been a hindrance to the immediate effectiveness of treaties in Nigeria.

Chapter six will give a summary of the research, the findings, lessons and conclusions drawn from them. This chapter will also provide solutions and recommendation to the Nigeria government.

CHAPTER 2

THEORETICAL FRAMEWORK

2.1 Introduction

This section examines the theoretical framework underpinning relevant for the establishment of this research.

2.2 Foreign direct investment theories

There are three economic theories that underpin the concept of FDI and they are the classical economic theory, the dependency economic theory and the middle-ground theory.

The classical economic theory

The classical economic theory on foreign direct investment takes the position that foreign investment is wholly beneficial to the host economy.[23] This theory is saddled on the numerous benefits that comes with FDI inflow into a nation's economy, such as the use of foreign capital in the stead of domestic capital and diversification of domestic capital for other uses to benefit the public, transfer of technology which is not available in the host state, creation of employment, acquisition of new skills through the transfer of technology, infrastructural development such as upgrading of transport system, health, education etc.,

A focus on these beneficial aspects of the foreign investment inflows enables the making of the policy-oriented argument that foreign investment must be protected by international law[24]. Such protection will facilitate the flow of foreign investment and lead to the economic development of less developed countries.

The dependency economic theory

The dependency theory is the exact opposite of the classical economic theory. The former submitted that FDI will not ensue in the meaningful development of the economy of host countries[25]. While the theory did not eliminate the possibility of FDI contributing significantly to the economy growth, it however, stated that it is not the solution to the issue of underdevelopment and inadequate economic growth faced by emerging economies.

This statement was buttressed by the repatriation of profit provision usually contained in the BITs. They construe the repatriation of profits to their home countries as a way of bolstering such economies and perpetuating domination in the economic sphere over host economies[26].

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[23] n 2 above, 48 -59

[24] n 2 above, 48 - 59

[25] n 2 above 48 - 59

[26] HJ Dunning & LM Sarianna Multinational Enterprises and the Global Economy (2008) 67-68

Furthermore, antagonist of the dependency theory argued that it is an avenue for breeding corruption as multinational companies collude with governmental authorities in breaking the law and provisions of the BIT. Thereby, making FDI favourable to a few as against been beneficial to the society.

Another disadvantage is that it fosters dependency of the host economy on FDI, thereby making them subservient and permanently dependent on home economies. Consequently, the dependency theory is against the attraction of FDI, rather, it should be avoided and resisted if available.

While it may be accepted that FDI has been detrimental to the economic progress in some cases, it is however extreme to conclude that FDI is unequivocally bad for the host state considering the strategic role it played in the development of several economies, especially Dubai and Singapore.

The middle-ground theory

The middle ground theory is the bridge between the classical and dependency economic theory of FDI. Without agreeing to either extreme, it strikes a balance between the two. While recognizing the benefits that accrue from the inflow of FDI into a nation's economy, it also acknowledges the disadvantages that come with it.

It is submitted that the middle-ground view is the more plausible view. This is borne out by both empirical and case studies which highlight the double-edged impact that FDI could have on host economy.

Suffice to say that the theories highlighted above acknowledge the impact of FDI on the development of host economies, the nature of the impact may however, be negative or positive. However, this research places its focus on the positive impact of FDI on the host economies by highlighting the significance of FDI in subsequent chapters.

2.3 Taxation theories

Competitive theory of international taxation

A country's tax system determines its status on the investment competition level. The higher the tax the lower the inflow of foreign investors and multinational companies. Investor will rather invest in countries with tax havens or low or no tax at the detriment of countries with high taxation.

In line with the above, companies play off countries on tax while governments gouge each other for precious investment, national growth and scarce jobs at the expense of each other's and their own tax bases[27].

OECD attempt at curbing the act by multinational companies was the introduction of the Base Erosion and Profit Shifting of global businesses (BEPS). Another plan initiated by the European Union is the establishment within the Union of a Common Consolidated Corporate Tax Base (CCCTB). This has however not been effective as most governments are all in for the competition. Both schemes propose a focus on governments' behaviour on corporate taxes recognising they would individually and collectively be best served by cooperating with each other to keep corporate tax rates high rather than individually defecting from co-ordination in a race to the bottom[28].

BEPS aims to get sovereign governments worldwide to cooperate to plug gaps and mismatches in national tax rules thus thwarting the tax planning strategies multinationals use to artificially shift profits to low or no-tax locations where there is little or no economic activity with results in little or no overall corporate tax being paid[29]. On the other hand, CCCTB was initiated to dilute tax sovereignty, replace national rules and systems with a single EU system for computing a company's taxable income, but leaving rate-setting with governments[30].

A good tax system should see business activity in the same way a company does: a company's income for a period is its revenues minus its costs with costs fully recoverable. No government tax code meets this standard. Investment cost recovery is couched by depreciation rules of one kind or another, spread over varying amounts of time and differing between one kind of investment cost and another. Tax bases should also conform to economic rationality. In the corporate tax context, the rule is territoriality – international businesses pay their taxes in the countries where they are earned. Most OECD countries are in the territoriality camp.[31]

Multinational firm theory

Legal scholars in the field of international tax often resort to firm theory to critically address policy considerations concerning the international allocation of taxing rights. The most widely known theory of the firm which is invariably cited by such scholars emphasizes the reduction of transactional costs to scale, grounded on a 1937 article by Ronald Coase "The Nature of the

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[27] M Kennedy Jablonski's Theory of International Taxation (2015) http://blogs.mazars.com/ireland/2015/10/02/jablonskis-theory-of-international-taxation/

[28] as above

[29] http://www.oecd.org/tax/beps-about.htm (accessed 09 August 2017)

[30] n 27 above, 22

[31] n 27 above

Firm''. Such theory is commonly used to debate the international allocation of the right to tax residual income from synergistic multinational firms, and to address the subject of transfer pricing. The functionally separate legal entity approach (FSLE), which is instrumental to the Arm's Length Principle (ALP) embedded in Article 9 of the OECD and UN Model Conventions, is heavily influenced by or perhaps derived from views of the firm in which ownership and property rights, as well contractual law, are primary value drivers. Critics of the inherent flaws of the ALP often use the same transactional cost theory of the firm to defend unitary taxation of multinational firms and the abandonment of the ALP in favour of global formulary apportionment (GFA) or an equivalent formulary application of the profit split method. Such critics often object to the ownership and property rights views of the firm using arguments of ineffectiveness of the ALP as an anti-abuse rule, whilst raising inter-nation equity considerations.[32]

2.4 Conclusion

After considering the classical theory, the dependency theory and the middle-class theory, this research will be making use of the middle-class theory. This is because in as much as the FDI has its disadvantages, the advantages outweigh the disadvantages.

[32] JS Romero Multinational Firm Theory and International Tax Law: Seeking Coherence. https://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Events/conferences/2016/Doctoral_mtg_2016/tavares.pdf (accessed 10 August 2017)

CHAPTER 3

IMPACT OF FOREIGN DIRECT INVESTMENT ON ECONOMIC GROWTH

3.1 Introduction

In the introductory chapter, this research discussed the importance of FDI on economic growth and development. It further links the availability of a double tax treaty to an increase in the inflow of FDI to an economy as it assures investors of the elimination of the menace of double taxation.

The second chapter of this research examined in brief the various theoretical underpinnings that are linked with the subject matter of discussion, i.e. FDI and taxation, stating clearly the theory this research will be adopting.

This chapter will carry out an in-depth discussion on foreign investment with a focus on FDI and its significant contribution to the economic growth of emerging economies. It will also discuss the trends of FDI in Nigeria alongside the performances of FDI in different sectors in Nigeria. A brief analysis of the impact of FDI in other countries will also be considered. Other salient issues necessary for building a discussion around FDI would also be examined.

3.2 Definition of foreign investment

The evolution of foreign investment can be traced as far back as the pre-colonial era to the post world war era. Foreign investment became more prominent and inevitable with the free movement of goods, services and people as authorised by the provisions of the GATTS 1947 and subsequently GATS 1994. The provisions of GATT 47 and GATS 94 authorised the creation of regional integrations, formation of customs unions, free movement of services and upheld principles such as non-discrimination of goods, elimination of trade barriers, fair and equitable treatment of foreigners and foreign investment in like circumstances.

The various legal backings provided for the protection of foreign investment at the international level encouraged multinational corporations to invest from one country to another aside from their initial place of incorporation. Therefore, the world began to experience cross border transactions also known as foreign investment.

In the words of investment scholar, foreign investment can be defined as the movement of or transfer of tangible or intangible assets from one country to another for their use in that country to generate wealth under the total or partial control of the owner of the assets.[33]

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[33] n 2 above, 8

Foreign investment can also be defined as 'a transfer of funds or materials from one country (called capital-exporting country) to another country (called host country) in return for a direct or indirect participation in the earnings of that enterprise'[34].

It is pertinent to note that aside the general definition of foreign investment, countries also include the definition of foreign investment in the bilateral investment treaties (BIT) between them. The definitions in the treaties are usually sector specific, i.e. a country can define investment to be fit made for a sector it seeks to expand. Such as mining, intellectual property, agriculture sector etc.

In United State of America BIT model, foreign investment was defined as every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

Foreign investment may take several forms which include, an enterprise, shares, stock, and other forms of equity participation in an enterprise; bonds, debentures, other debt instruments, and loans; futures, options, and other derivatives turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; intellectual property rights, licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

The two types of foreign investment that are deducible from the above forms are the Foreign Portfolio Investment and Foreign Direct Investment. Foreign Portfolio Investment usually involves the movement of money for the purpose of buying shares or other security instruments through which capital is raised for venture in a company formed or functioning in another country[35]. In this form of investment, the physical presence of the investors is not required for the transactions. Foreign Direct Investment on the other hand is the transfer of physical property such as equipment, or physical property that is bought or constructed such as plantations or manufacturing plants from one country to another for the purpose of generating wealth.[36] In this regard, the physical presence of the investors is an essential feature.

The distinguishing element between an FPI and FDI is that, in portfolio investment, there is a separation between, on the one hand, management and control of the company and, on the

[34] The Encyclopaedia of Public International Law vol. 8, 246
[35] n 2 above, 8 -9
[36] n 2 above, 8 -9

other, the share of ownership in it. However, there are two types of foreign investment, this research and particularly this chapter seek specifically, a focus on FDI.

3.3 Definition and classification of FDI

The IMF in their attempt to explain the concept of foreign direct investment defined it as 'investment that is made to acquire a lasting interest in an enterprise operating in an economy other than that of an investor, the investor's purpose being to have an effective choice in the management of the enterprise.[37] This definition captures the different classifications of FDI which can be categorised in terms of the purpose of investment, the mode of entry investment and the direction of the investment.

Classification of FDI

FDI classification largely depends on the mode of entry of the investor, the rationale behind the investment and the direction the investment intends to take. If the criterion for classification is the mode of entry, FDI will be classified as Greenfield or Brownfield Investment. Classification based on the rationale behind the investment will either be natural resource-seeking, market-seeking, efficiency-seeking and strategic asset-seeking FDI. If the direction of the FDI is what is been used to classified, it will be deemed inward and outward flow FDI[38].

Greenfield FDI

Greenfield investment entails the establishment of a new venture, firm, or subsidiary in another country. This usually do not require ten percent acquisition of the controlling interest rather, it requires the incorporation of the firm or subsidiary in the foreign country in compliance with the relevant laws on incorporation of foreign entity in such countries and other relevant provisions guiding foreign investment. A typical illustration of this is the establishment of South African telecommunications company MTN in Nigeria and several other African countries[39].

Brownfield FDI

Contrary to the Greenfield Investment, the Brownfield investment is the acquisition of sufficient controlling interest in an existing firm in a foreign country which is usually ten percent. This usually occurs through the mechanism of merger and acquisition of corporate entities. In Nigeria and other African countries, privatization has also served as a key channel for entry of brownfield Investments. A good example of this is the merger between Nigerian

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[37] The International Monetary Fund, Balance of Payments Manual (1980) 408
[38] n 26 above, 67-68
[39] Unpublished: BO Ajala, Gearing FDI Towards Sustainable Development in Nigeria - The Role Of The WTO Trims Agreement, Unpublished Dissertation, University of Pretoria, 28

bank, IBTC and South African bank, Standard Bank, which resulted in IBTC Standard Chartered Bank.[40]

Natural resource-seeking investment

As the name implies, the natural resource-seeking FDI is an investment made towards the exploitation of an asset or mineral resources in a country. The home country which is the resource blessed country has an advantage over the foreign investor during negotiations. This is because, foreign investor competes in bidding and gaining licenses for the exploitation of the mineral resources. Therefore, same way countries compete for foreign investors, investors could also compete for limited available resource-rich locations. Resource-seeking FDI tend to be concentrated in the extractive sectors such as the mining and oil industries. Nigeria is a good example as there are more investors in the extractive industries than the other sectors of the country.

Efficiency-seeking FDI

This kind of FDI is made pursuant to a need to make efficient gains with a view to maximizing profits and minimizing the costs of the firm.[41] The higher the costs of production such as land, labour, and capital, the less the profit a firm is likely to make except in the case of necessary goods. There could be other costs incurred by a firm for marketing, distribution, transportation, power-generation, and even tax which could contrive to reduce the profit a firm is likely to make. Consequently, firms are always exploring ways of bringing down their costs or being more efficient. A country offering comparatively lower costs of factors of production, better infrastructure, lower tax, amongst other costs naturally becomes the destination for efficiency seeking-FDI. Nigeria and some other African countries are not attractive locations for this type of FDI because of the high cost of production and other miscellaneous costs.[42]

Market-seeking FDI

This is the kind of FDI made with a view to either gaining access to a foreign market or being able to secure a larger market for their product or services.[43] High tariffs or import bans have posed near formidable obstacles to firms seeking access to foreign markets. These protectionist measures are usually deployed by countries in a bid to prevent foreign products from competing with domestic products. Market-seeking FDI therefore is made by a Multinational Company to surmount this obstacle. Once the tariff walls have been scaled by establishing a plant or

[40] n 26 above, 67-68

[41] n 26 above, 67-68

[42] n 26 above, 67-68

[43] n 26 above, 67-68

commercial presence within the foreign country, it would be much easier for such firms to supply the local market. Alternatively, the potential of securing a larger market and making greater profits could inform the making of this type of investment. In this regard the potential presented by countries such as Dubai, Singapore, China makes them attractive to foreign investors.

Strategic asset -seeking FDI

This is the type of FDI established with the intention to acquire a certain percentage or the totality of a foreign entity. A good example is the acquisition of the South African SAB Miller by AB Inbev brewing companies.

Inward and outward FDI

This is a classification of FDI based on direction of flow. Inward FDI refers to the total volume or value of FDI it receives into its economy from firms located in foreign countries. While outward FDI refers to the total value of FDI made by firms located within its jurisdiction in other countries. Some do not perceive outward FDI as positive premised on the notion that it ought to have been used for domestic developmental purposes. However, apart from the fact that profits can be repatriated back to the home country, outward FDI is an indicator of the maturity of an economy.

3.4 Theoretical underpinnings of FDI

There are three economic theories that underpin the concept of FDI and they are the classical economic theory, the dependency economic theory and the middle-ground theory.

The classical economic theory

The classical economic theory on foreign direct investment takes the position that foreign investment is wholly beneficial to the host economy.[44] This theory is saddled on the numerous benefits that comes with FDI inflow into a nation's economy such as the use of foreign capital in the stead of domestic capital and diversification of domestic capital for other uses to benefit the public, transfer of technology which is not available in the host state, creation of employment, acquisition of new skills through the transfer of technology, infrastructural development such as upgrading of transport system, health, education etc.,

A focus on these beneficial aspects of the foreign investment flows enables the making of the policy-oriented argument that foreign investment must be protected by international law[45].

[44] n 2 above, 48 -59

[45] n 2 above, 48 -59

Such protection will facilitate the flow of foreign investment and lead to the economic development of less developed countries.

The dependency economic theory

The dependency theory is the exact opposite of the classical economic theory. The former submitted that FDI will not ensue in the meaningful development of the economy of host countries[46]. While the theory did not eliminate the possibility of FDI contributing significantly to the economy growth, it however, stated that it is not the solution to the issue of underdevelopment and inadequate economic growth faced by emerging economies.

This statement was buttressed by the repatriation of profit provision usually contained in the BITs. They construe the repatriation of profits to their home countries as a way of bolstering such economies and perpetuating domination in the economic sphere over host economies[47]. Furthermore, antagonist of the dependency theory argued that it is an avenue for breeding corruption as multinational companies collude with governmental authorities in breaking the law and provisions of the BITs. Thereby making FDI favourable to a few as against been beneficial to the society.

Another disadvantage is that it fosters dependency of the host economy on FDI, thereby making them subservient and permanently dependent on home economies. Consequently, the dependency theory is against the attraction of FDI, rather, it should be avoided and resisted if available.

While it may be accepted that FDI has been detrimental to the economic progress in some cases, it is however extreme to conclude that FDI is unequivocally bad for the host state considering the strategic role it played in the development of several economies, especially Dubai and Singapore.

The middle-ground theory

The middle ground theory is the bridge between the classical and dependency economic theory of FDI. Without agreeing to either extreme, it strikes a balance between the two. While recognizing the benefits that accrue from the inflow of FDI into a nation's economy, it also acknowledges the disadvantages that come with it.

It is submitted that the middle-ground view is the more plausible view. This is borne out by both empirical and case studies which highlighted the double-edged impact that FDI could have on host country economy.

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[46] n 2 above, 48 -59

[47] n 26 above, 67-68

Suffice to say that the theories highlighted above acknowledge the impact of FDI on the development of host countries' economies, the nature of the impact may however, be negative or positive. However, this research places its focus on the positive impact of FDI on the host economies by highlighting the significance of FDI in the next subheading.

3.5 Benefits of FDI to the host country

According to the OECD benchmark 'FDI is a key driver of international economic integration and a huge source of revenue generation'[48]. According to the proponents of the classical economic theory, the inflow of FDI is a catalyst for economic growth in the host country.
Some of the positive impacts of the presence of FDI in the host country include:

Employment creation

More jobs are created with the inflow of foreign investment specifically the Greenfield and natural resource seeking investment which usually requires a whole new set up in terms of building and staffing. The construction of infrastructure and the setting up of the new venture comes with the employment of labour before, during and after construction. Countries usually have a certain percentage of locals a foreign investor is mandated to employ in their Local Content Act.
Creation of employment also leads to an increment in income and the development of competition. New jobs offer more buying power to the population of that country which in turn leads to economic boosts.[49]

Technological transfers

Transfer of technology involves both the physical presence of such technology for the benefit of the investor and the society and the transfer of the technical know-how of such technology to people in the investment sector. It also serves as a form of healthy competition to domestic investors in the manufacturing of similar technology.
Countries generally have a government organization that handles and identifies potential commercially viable technology. These types of organizations are also present in big companies and universities. The advantages of foreign direct investment and the transferring

[48] Organization of Economic Co-operation and Development (OECD), Benchmark Definition of Foreign Direct Investment. Fourth Edition, 2008.
[49] African Economic Research Consortium: SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Targets, Impacts and Potential. (2006).

of technology for the receiving country is great, as those countries usually don't have access to research facilities or the knowledge otherwise.[50]

Sources of capital

When there is an increase in job creation, there is an increase in income and the higher the income the higher the tax paid to the host country. This in turn spurs economic growth because foreign corporations are known to offer higher salaries than national corporations.

Economic development

One of the most constant advantages of the inflow of FDI is its contribution to the overall economic development of the host country. This is especially applicable to emerging economies whose major external source of financing has been FDI. It has been noted that FDI has contributed significantly to the economic development of countries faced with economic hardship or countries trying to build their economy from the surface. Dubai and Singapore are a good example to buttress this fact.

All the previous advantages contribute to the overall economic growth of the country which leads to the increase of real gross domestic product, also known as the GDP. Economic growth can also be negative, but a country with the advantages of foreign direct investment will generally have more positive economic growth. Economic growth is heavily impacted by changes in technology and the introduction of new technology. A very good example of an economic-growth-boosting technology is the introduction of the Internet.

3.6 FDI trends and performance in Nigeria

After Nigeria gained independence in 1960, the presence of foreign investment in the economy was significant. About 25 per cent of the registered companies in Nigeria were foreign owned while in 1963, it has increase to about 70 per cent of foreign investment in the manufacturing sector? Most of these foreign investors were from Europe and their focus was on commerce and cash crops.[51]

To reduce the risk of over dependence on foreign investment, the Nigeria government came up with its first National Development Plan which sought to eliminate this risk and broaden the economy base of Nigeria. The tariff structure in this plan was not 100 percent successful because of the introduction of foreign exchange and import licensing control introduced in

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[50] O Ogunkola & A Jerome 'Foreign direct investment in Nigeria: Magnitude, Direction and Prospects' in SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Target, Impact and Potential (2006) 144-177

[51] http://unctad.org/en/Docs/diaepcb20081_en.pdf (accessed 09 October 2017)

1971. The second National Development Plan was enacted in 1977 with the intention to accelerate indigenization to give government a greater proportion of the production asset of the economy[52]. This plan brought about the imposition of certain restrictions on the activities of foreign investors and their investment in Nigeria.

The impact of the indigenization policies compelled foreign firms to enter joint ventures as majority of the manufacturing activities have been exclusively reserved for Nigerians, it also imposed stricter measures for the entry of FDI into Nigeria[53].

In 1977, the second indigenization policy was enacted which further tightened restrictions on FDI entry in three ways:

(a) by expanding the list of activities exclusively reserved to Nigerian investors (e.g. bus services, travel agencies, the wholesaling of home products, film distribution, newspapers, radio and television and hairdressing)[54]

(b) by lowering permitted foreign participation in the FDI-restricted activities from 60 to 40 per cent and adding new activities restricted to 40 per cent foreign ownership such as fish-trawling and processing, plastic and chemicals manufacturing, banking and insurance[55]; and

(c) by creating a second list of activities where permitted foreign investment was reduced from 100 to 60 per cent ownership, including manufacturing of drugs, some metals, glass, hotels and oil services companies.[56]

In 1989, the Nigeria government realised the importance of foreign investment to the economic growth and decided to amend its laws to be more foreign investment friendly. In 1995, after the establishment of the Nigeria Investment Promotion Commission (NIPC), the NIPC Act opened all sectors to foreign participation except for a few negative lists such as drug and arms. Since the enactment of this Act, there has been 100 per cent foreign ownership in all sectors except the petroleum sector where FDI is limited to production sharing and joint ventures.

3.7 Sector specific impact of FDI in Nigeria

Despite the provisions of the NIPC Act as well as granting 100 per cent foreign ownership to non-oil sector and partial ownership to the oil sector, the petroleum industry in Nigeria has been the major target for foreign investor in the last 30 years with no significant participation

[52] http://unctad.org/en/Docs/diaepcb20081_en.pdf (accessed 09 October 2017)
[53] as above
[54] n 52 above
[55] as above
[56] n 52 above

in other sectors. However, with the recent decline in oil prices and crude oil exportation, foreign investors are beginning to look beyond the petroleum sector to other sectors such as the manufacturing and backbone services sectors. This sub section will examine the impact FDI have had on the petroleum, manufacturing and some backbone services sector.

FDI impact in the oil Sector

The focus of foreign investors has been in the oil sector for the past 30 years with little or no focus on other sectors. However, the presence of foreign investors in the Nigeria oil sector has been instrumental in the development of oil extraction and there has been a remarkable growth. The extraction of oil by foreign investors have resulted in Nigeria been ranked 11th largest oil producers in the world and the largest in Africa.[57]

FDI Impact in Manufacturing

FDI has not had a significant contribution on the growth of the manufacturing sector in Nigeria. This is because foreign investors have been focusing on the oil sectors. The manufacturing industry in Nigeria has been stagnated for about 30 years due to unfavourable investment policies and indigenisation policies. Also, Nigeria's manufacturing export performance is very weak. The footwear and textiles industry has an important foreign presence (up to 50 per cent of the industry may be foreign owned) and has clearly struggled in the last 10 years to retain export competitiveness (despite the potential boost from the United States African Growth and Opportunity Act (AGOA)[58]. The building materials, pulp and paper and chemicals industries have been largely in the hands of State- or nationally-owned enterprises[59]. This is changing as the most recent round of privatization has been open to foreign investors and foreign acquisitions have taken place (e.g. in cement and aluminium).

FDI impact in the backbone services

The impact of FDI on some of the backbone sectors in Nigeria such as Telecommunications, Power and Transportation will be discussed below.

Telecommunications

FDI has had a notable impact on the expansion of the telecommunication sector in Nigeria since the launch Global System for Mobile (GSM) licensing in January 2001. Two of the three licences issued went to foreign companies i.e. MTN of South Africa and Econet Wireless (at

[57] n 52 above
[58] as above

the time a Zimbabwean-South African firm). Within two years of operation, Econet and MTN had signed up over 2.2 million subscribers[60]. Since the commencement of operation, MTN have invested more than 3 billion dollars in Nigeria.

The impact of FDI in the telecommunication sector has been very remarkable. In the sector, subscribers have grown from 35 000 to over 16 million by September 2005.

Power

Power supply in Nigeria is currently faced with low quality result and absence of competition. The cost of electricity is high and there is no constant supply of power. According to the 2001 World Bank Investment Climate Assessment[61], about 97 per cent of firms and businesses in Nigeria own a generator due to poor power supply.

Without implying that the Nigeria government is not capable of handling its power sector, this research proposes an increase in the foreign participation in the power sector to increase its efficiency level. This is because there has been a very low foreign participation in the power sector.

Transport

FDI in the transport sector is at the emergent stages as liberalization and privatization have only just begun to make private investment opportunities available. Ports sector concessioning is well underway, with 20 long-term concession agreements fully executed by the end of 2006 and six more in progress, and concessions have recently been announced for airport services. A.P. Moller of the Maersk Group has acquired the Apapa container terminal concession and the ENL consortium has emerged as preferred bidder for Apapa terminals A and C[62]. Although these investments are too recent to judge their impact on the cost and quality of port services, some benefits are already visible, and include increased competition in port services and the removal of concession charges by shipping lines, as operations and ship turnaround times improve.

In September 2004, Virgin Atlantic was named as technical partner in the new national flag carrier. Initial capitalization for Virgin Nigeria was $50 million, of which Virgin Atlantic provided approximately $24.5 million[63].

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[60] n 52 above

[61] I Giuseppe et al (2009) An Assessment of the Investment Climate in Nigeria. Directions in Development; private sector development. https://openknowledge.worldbank.org/handle/10986/2608 (accessed 09 October 2017)

[62] n 52 above

[63] n 52 above

Conclusively, the oil industry has received more FDI participation than other sectors since the independence. FDI in the no-oil sector have been held back by overt restrictions in favour of national enterprises until the 1990s and by poor business/investment policies. Even though Nigeria had relaxed virtually all its restrictions on the entry of FDI, other countries moved faster to attract non-oil FDI. In the 20s Nigerian account for about 15 percent of FDI inflow in Africa compared to the 70s when it was 30 per cent[64].

The growth in the oil sector is attributable to the participation of foreign investors, therefore, Nigeria should consider working on attracting more FDI to its non-oil sector to increase the speed of economic growth and contributes to putting an end to the recent recession due to reduction in oil revenue.

3.8 Why Nigeria needs FDI

FDI has proved to be resilient during financial crises[65]. An appropriate illustration would be the contribution and stability of FDI during the global financial crisis in the Asian countries such as China, UAE and Singapore. The resilience of FDI during financial crises was also evident during the Mexican crisis of 1994-95 and the Latin American debt crisis of the 1980s.[66] This resilience and stability provided by FDI during the financial crisis and economic meltdown in Dubai and Singapore has prompted this research to recommend the attraction of FDI as a means of remedying Nigeria's ongoing recession and intention to diversify its economy. This recommendation is directed at the recent announcement made by the federal government of Nigeria currently seeking for diversification of its economy.[67] Due to the recent decline in oil prices, the reduction in the exportation of crude oil, the controversial foreign exchange issue and incessant political instability, Nigeria's government confirmed that Nigeria is in economic recession[68] and financial crisis.

This research proposes attracting FDI because of its feature as an overall economic boaster and a way out amid financial crisis as seen in Asia and Mexico. Likewise, the benefits of FDI have encouraged countries over the world to strive to maintain a favourable investment climate to attract foreign direct investment.[69]

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[64] as above

[65] How Beneficial Is Foreign Direct Investment for Developing Countries? June 2001 http://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm (accessed 22 August 2017)

[66] As above

[67] n 12 above

[68] http://www.premiumtimesng.com/news/top-news/209605-nigerian-economy-officially-recession-govt-confirms.html (accessed 23 August 2017)

[69] CM Ojong et al 'Determinants of Foreign Direct Investment Inflow to Nigeria (2015) Journal of Humanities and Social Science 34-43

The impact the inflow of FDI will have on the Nigeria economy in this period of economic recession cannot be over emphasized, it will amongst others, increase the rate of economy development which is always almost what is being sort after; creates employment considering the fact that there has been an increase in job loss due to recession; provides knowledge and skills transfer in the area of management and technology; facilitates local firms' access to international markets and finance; enhances international trade integration; facilitates human capital formation; provide avenues for risk and product diversification; encourages favourable competition amongst businesses and increases product diversity[70]. Also, the presence of an increasing inflow of FDI in Nigeria will be sufficient to cover the loopholes in the deficiency in the economy and contributes to its gradual recovery from the ongoing recession.

Therefore, Nigeria's foreign investment policies should gear towards attracting and encouraging inflow of foreign capital investment, not only to the oil sector but also to the non-oil sector. One of the most effective strategies for attracting foreign investment is to make the Nigerian economy very attractive to foreign investors and this can be done through several factors such as political stability, economic stability, and absence of corruption, infrastructural facilities, advanced technology and so much. However, this research will focus on taxation as a means of attracting FDI such as tax havens, tax holidays and most efficiently, double tax treaties. The important of a double tax treaty to the inflow of FDI will be discussed in the subsequent chapter.

3.9 The impact of FDI to the economic development of United Arab Emirates (UAE) and Singapore.

This section will give a brief historical background to the economic growth of UAE with a focus on Dubai which is one of the seven emirates in the United Arab Emirates and Singapore. Despite the hardship and the recession these countries went through, they were able move from not being economically buoyant to being one of the most sort after economies for foreign investors.

FDI contribution to UAE, Dubai

The Dubai city is one of the seven emirates that make up the United Arab Emirates (popularly called UAE). The UAE pride itself as one of the countries that have witnessed a buoyant economic growth over the past few years and one of the fastest growing emerging economies

[70] Tax Effect on Foreign Direct Investment 2008 https://www.oecd.org/investment/investment-policy/40152903.pdf (accessed on 18 August 2017)

in the world. The UAE accounts for 40 percent of its export towards oil and natural gas contributing it to a massive 38 percent of country's GDP[71]. However, in its quest to reduce future dependence on oil revenue and to avoid economic meltdown which is currently faced by countries like Nigeria during the decline in oil price, the government of UAE installed several strategies to strengthen its economy. One of the strategies is to attract FDI to the country by giving foreign investors some attractive incentives. Attracting FDI has become a focus of attention for developing countries as a development strategy. The total volume of foreign investments in the UAE at a regional base of over 500 international companies, exceeded $100 billion in the past 10 years.[72]

UAE ranked seventeenth of 143 economies in the world, according to the Global Competitiveness Report issued by the World Economic Forum in 2015[73], and 26th of 189 countries in Ease of Doing Business Report of 2016 according to the World Bank[74]. UAE maintains a position as an investment hub not only for developing countries but also for developed countries. According to the Global Investment Report of 2015 published by the United Nations Conference on Trade and Development (UNCTAD), UAE ranked as the second largest FDI recipient in the West Asia region, after Turkey[75]. It likewise attracted FDI inflows of USD 10.1 billion in 2014, according to FDI intelligence[76].

Several efforts have been put in place by the UAE government in attracting more FDI, it includes: enacting effective and business friendly legal frameworks for foreign investors and their investment. This is important for every government to put in place as it encourages a healthy and competitive environment. It has also enacted several legislations guiding investment which has helped in removing hindrances in the regulation and administration of foreign investment.

This sub session will focus briefly on Dubai because it accounts for the majority of FDI projects in UAE. Total investment into Dubai resulted in the creation of 139,451 jobs and USD 53.67

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[71] SH Khan & S Agha "Impact of FDI in U.A.E over the Main Elements of Sustainable Development: Economy and Environment (2015) 7 Journal of Emerging Trends in Economics and Management Sciences 263-267 http://jetems.scholarlinkresearch.com/articles/Impact%20of%20Fdi%20in%20U.A.E%20over%20the.pdf (accessed 23 August 2017)

[72] http://www.khaleejtimes.com/business/economy/uae-draws-100-billion-foreign-direct-investment (accessed 23 August 2017)

[73] http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=ARE (accessed 25 August 2017)

[74] http://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=NG-AE (accessed 25 August 2017)

[75] http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf (accessed 25 August 2017)

[76] http://www.fdiintelligence.com/Locations/Middle-East-Africa/UAE/A-strong-first-quarter-for-FDI-into-Dubai (accessed 25 August)

billion capital investment between the period 2006 and 2014.[77] Also, Dubai has demonstrated that FDI plays a pivotal role in promoting and supporting the process of economic transformation which has transferred Dubai and the UAE from a solely oil based economy to a diversified economy.

Dubai is the major hub and top destination of global FDI inflows among the UAE's emirates due to a variety of reasons which include its reputation of economic openness, investors' perception of Dubai's competitive advantage founded on its safety and security and the availability of global infrastructure and the reputation that has been built over the years to keep pace with the breakneck speed of its economic development[78]. Also, Dubai is known for the availability of conducive business environment and business friendly regulatory environment. Furthermore, Dubai has attractive structural factors such as the nearness of the markets, and the geographical location of Dubai making it a potential platform to influence the Persian Gulf, Middle East countries and other Asian and African countries.[79]

Additionally, Dubai has been cited as a city with political and economic stability, rapid GDP growth, fast growing capital markets, swift population growth, absence of taxes, and absence of corruption are all positive factors contributing to its attractiveness to foreign investors.

Needless to say, that the UAE: Dubai is an apt illustration of economies who takes the inflow of FDI as an important aspect of diversification, judging from their consistency over the years and the efforts put in place to attract FDI by providing a business friendly and conducive investment environment for investor. To further buttress their determination to increase the inflow of FDI to their economy, the Dubai Department for Economic Development, recently announced the launch of its FDI monitor[80]. The Monitor is a system of measurement that keeps tracks of the inflow of FDI and ensures the attraction of more FDI into the economy.

FDI contribution to Singapore

Singapore is a small densely populated country. Unlike countries like Nigeria with numerous mineral and natural resources to their name, Singapore is gifted with very few natural resources. It is impeccable to note that, its lack of natural resources has not undermined its

[77] https://pet2017paris2.sciencesconf.org/146548/document (accessed 23 August 2017)

[78] AA Hamdani, FDI, Economic Performance and Technological Spillover Effects: Evidence from UAE (2017) School of Economics, University of East Anglia)

[79] as above

[80] http://gulfnews.com/business/economy/dubai-launches-foreign-direct-investment-monitor-1.1708811 (accessed 24 August 2017)

economic progression. Singapore’s ability and strategy in attracting FDI has been one of the key attributes to its economic success over the years.

Singapore has based its economic development on a proactive strategy to attract FDI using its trade openness. Some of the attributes of Singapore that enhances its attraction to foreign investors are: the ease of doing business, favourable lending to foreign investors, a simple regulatory system, tax incentives, a high-quality industrial real estate park, availability of double tax treaties, political stability and the absence of corruption all contributed to Singapore as an attractive destination for investment. More so, it was ranked by the World Bank Group as the second country with regulation that promotes and provides ease of doing business to foreign investors[81].

Singapore has been ranked as the 7th largest recipient of FDI in the world and the 3rd largest among the East and Southeast Asian countries[82]. FDI has played a significant role in accentuating the economic progression in Singapore. Considering its status as a country with little or no natural resources, it has depended on multinational companies in bringing in capital to expand its economy, increase its citizens’ technical know-how through the importation of new technology, creates more jobs, and balances its exchange rate and several other benefits that accompany foreign investment.

FDI’s contributions to the economic growth of Singapore are evident in the progressive report given by the Association of Southeast Asian Nations (ASEAN) Investment Repot[83]. This report reflected the ration of inward FDI stock to GDP at 72% which is the highest ration in the world. Likewise, 90% of value added in Singapore's electronics industry is accounted for by foreign investors, and that FDI accounts for fully two-thirds of equity capital in the country's manufacturing sector[84]. In addition, Singapore's productivity increased fastest in those industries in which FDI was concentrated.

Singapore’s attributable features that further attracts FDI to it are: conducive investment environment and strategic geographical location, non-fiscal advantages, low corporate tax rates, absence of long and burdensome procedures for entry and establishment of foreign investment, fair and equitable treatment in like circumstances of foreign investor as local investor, and most importantly, Singapore has signed a number of double tax treaties to

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[81] http://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=NG-AE-SG (accessed 25 August 2017)

[82] UNCTAD World Investment Report 2016 http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf (accessed 22 August 2017)

[83] http://asean.org/storage/2016/09/ASEAN-Investment-Report-2016.pdf (accessed 25 August 2017)

[84] as above

encourage investor against hostile takeover and eliminate the menace of double taxation of profit. All these features have made Singapore a low-risk high-return FDI destination for foreign investor. Also, Singapore's non-fiscal advantages for foreign investors which comprises of strategic location, physical and financial infrastructure, human resources, political and social stability, good governance and a foreign investment policy that are business friendly have contributed to the increase inflow of FDI into Singapore.

Without further ado, the impact of FDI on Singapore economic progression cannot be overemphasized. Without any natural resources to rely on, FDI inflow has contributed to its economic growth and stability.

Needless to say, that countries such as Nigeria, blessed with abundance of natural resources secures an added advantage at attracting FDI putting into consideration the availability of various sectors to invest in, most especially the mining sector. Another pedestal that Nigeria can stand on to increase its attractiveness as a location for investors is its status as the giant of Africa, and its location in the heart of Africa.

3.10 Conclusion

This chapter has extensively discussed the evolution of foreign investment internationally and in Nigeria. The declines in the FDI trends in Nigeria due to unfavourable investment policies, the impact of FDI on the oil and non-oil sector were also discussed. It also carried out a critical analysis of the factors that contributes to the inflow of FDI into Dubai and Singapore.

After the above discussions, it can be concluded that the significant contribution of FDI towards economic growth and development cannot be brushed aside. Despite the position of the proponent of the dependency theory on the disadvantages of FDI reliance, judging from the progress made by Dubai and Singapore, it is safe to conclude that the merits of FDI outnumber its demerit.

Several factors were put in place by both Dubai and Singapore to enhance the inflow of FDI into their economies and most importantly, they were both ranked by the World Bank as one of the tops countries on the ease of doing business statistic. Therefore, this research recommends that Nigeria install investment policies that enables an investment friendly environment, putting in place legislations and administrative ease that encourages easy incorporation of foreign investment and most importantly, this research will focus on the need to enact more host country friendly double taxation treaties. The contribution of a double tax treaty towards the inflow of FDI will be discussed in detail in the next chapter.

CHAPTER 4

DOUBLE TAXATION TREATIES

4.1. Introduction

In the first chapter of this research, the background of the study discussed the impact of FDI inflow on economic growth. The numerous advantages the presence of foreign participation has on the sectors and the citizens of a country. In this discussion, it was established that for a smooth inflow of FDI, the government of the host country is saddled with certain responsibilities such as, creating an investment friendly environment, making available tax

incentives and establishing double tax treaties to eliminate the menace of double taxation. This research focuses particularly on the establishment of double taxation treaty to eliminate the menace of double taxation.

The second chapter carried out a brief study on the theoretical framework of the subject matter of this research, i.e. FDI and taxation. The theoretical underpinnings of FDI are the classical economic theory, the dependency economic theory and the middle-class economic theory. This research argues that the middle-class economic theory is a more plausible theory because of the balance it creates between the classical economic theory and the dependency economic theory. In as much as there are demerits to the presence of foreign investment such as environmental degradation and over reliance, the merit of FDI far outweighs its demerits.

In the previous chapter, an in-depth study on foreign direct investment was done. The advantages, types, impacts as well as factors that attracts foreign investors. The historical trends of FDI inflow in Nigeria was also discussed and the impact of FDI on the oil and non-oil sector. This chapter also look into the strategies put in place by Dubai and Singapore in attracting FDI into their country and concluded by admonishing Nigeria on the impact FDI can have on its economic and also pointing out factors Nigeria need to be in place for an effective result.

This chapter will examine the concept of taxation both at international and domestic level, the evolution of double taxation treaties, the theoretical underpinnings influencing double taxation and the double taxation trends in Nigeria. Other important issues necessary for the establishment of a proper understanding of taxation will also be discussed.

4.2. Definition of taxation

The concept of taxation can be traced to an extremely long and well-established history from the pre-colonial era to the post world war era. The rationale behind taxation has constantly being the generation of revenue to fund the expenses of the government. The payment of taxes has been so constant since its evolution[85], so much so that Benjamin Franklin was quoted to have said that:

'In this world, nothing can be said to be certain, except death and taxes'[86]

Several scholars and authors have defined taxation. However, one of the most frequently cited definitions is the one adopted by B. Croome, where Taxation was described as 'a monetary

[85] TA Olaiya, Tax Administration and Burden of Governance in Nigeria and Ghana: a Comparative Analysi s. (2011)

[86] J Norregaard & TS Khan 'Tax Policy: Recent Trends and Coming Challenges (2007) 3

based compulsory contribution payable by the public as a whole or a substantial sector thereof to a government'[87]. B Croome's definition reveals the crux of taxation which are: compulsory payment of money by individuals or corporation to the government. It is imperative to note that the payment of tax can be done in several forms, such as personal income tax, corporate tax, value added tax, excise and custom tax, withholding tax and so on. The form of tax paid depends on who is paying and the rationale for paying.

In 1774, Adam Smith postulated four canons that should govern a good taxation system[88]. These principles have been universally accepted to be important in administering a government tax system and were enshrined in his book 'Wealth of Nations'.

Adam Smith's celebrated cannons of taxation are:

(1) Canon of equality or ability: The concept of equality means citizens should pay taxes in proportion to their incomes. This principle is in line with the progressive method of taxation which states that, the rates or percentage of taxation should increase with the increase in income and decrease with the decrease in income[89]. In the words of **Adam Smith:**

The subject of every state ought to contribute towards the support of the government as early as possible in proportion to their respective abilities that is in proportion to the revenue which they respectively enjoy under the protection of the State[90].

(2) Canon of certainty: The canon of certainty implies that there should be certainty with regard to the amount which a taxpayer is called upon to pay during the financial year. If the taxpayer is definite and certain about the amount of the tax and its time of payment, he can adjust his income to his expenditure[91].

The State also benefits from this principle, because it will be able to know roughly in advance the total amount which it is going to obtain and the time when it will be at its disposal. If there is an element of arbitrariness in a tax, it will then encourage misuse of power and corruption.

Adam smith believed that;

The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid all ought to be clear and plain to the contributor and to every other person.[92]

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[87] n 10 above, 10
[88] A Smith and B Mazlish, the Wealth of Nations. (2002)
[89] http://economicsconcepts.com/canons_of_taxation.htm (accessed 07 August 2017)
[90] n 88 above
[91] http://economicsconcepts.com/canons_of_taxation.htm (accessed 07 August 2017)
[92] n 88 above, 43

(3) Canon of convenience: This means that the tax should be levied at the time and the manner which is most convenient for the contributor to pay it. Also, the mode of payment or location of payment of tax should be convenient.

(4) Canon of economy: The canon of economy implies that the expenses of collection of taxes should not be excessive. They should be kept as little as possible, consistent with administration efficiency. If the government appoints highly salaried staff and absorbs major portion of the yield, the tax will be considered uneconomical. Tax will also be regarded as uneconomical if it checks the growth of capital or causes it to immigrate to other countries.

4.3 The emergence of international taxation

International taxation refers to the global tax rules that apply to transactions between two or more countries in the world.[93] It governs all tax issues with foreign element arising under a country's income tax laws.

Considering the recent increase in the discussion around international taxation, it is very imperative to note that taxes are not international. There is no separate global tax law that governs the taxation of cross-border transactions or inflows of foreign investment neither are there international tax courts or administrative body saddled with the responsibility to settle tax issues[94].

However, with the fast development of technology, the inclusion of movement of services and people in the GATT 1994, the quest of countries to attract foreign investment because of its numerous benefits, cross-border transactions and other significant international factors, have resulted in international taxation and international taxation conflicts between countries. These conflicts emanated due to the absence of regulations or agreement to determine which country should exercise its taxing rights over the activities of a multinational company or a foreign investor. Should it be the country of residence or the source country or the place of permanent establishment? These were issues that resulted in conflicts between countries putting multinational corporations in a dilemma and continuous loss of income.

Several efforts were instituted to resolve the conflicts of international taxation and the double taxation of foreign investors. However, the establishment of the concept of double taxation treaties by international organisations such as the OECD and the UN between countries have been more efficient in resolving the conflicts[95]. Double taxation treaties between two countries

[93] R Rohatgi 'Basic International Taxation' (2002) 1
[94] J Isenbergh, International Taxation. (2005)
[95] n 93 above, 44

are set of rules for the taxation of transactions and relationship between persons resident in the countries[96]. Most double taxation agreement customarily follows the OECD Model Tax Convention on Income[97] and Capital, the UN Model Double Taxation Convention and the US Model which is usually followed by the US when signing treaties with other countries.

The international model laws provide universal and international rules that guide the taxation of international transactions, movement of services and people and majorly ensure that the incidences of taxing an individual or corporation twice are eliminated. Most countries follows the OECD Model law in drafting their DTTs, though it has been said, that the OECD model favours the developed countries overs the developing countries while the UN provisions are more favourable to the developing countries.

4.4. Double Tax Treaties as a solution to international tax conflicts

As mentioned above, international transactions, evolution of technology and the movement of people and services all led to international taxation conflicts which were resolved with the establishments of double tax treaties between countries. This is majorly because each country usually exercises its taxing rights under its domestic laws where taxpayers are subjected to taxation on their international transaction in more than one jurisdiction because of conflicting taxing rights.

Double taxation has been an impediment to international trade and investment and the major objective of international taxation is the eradication of double taxation[98]. It was initially addressed through domestic tax legislation where countries offer to give tax reliefs in the form of tax exemption, tax holiday, tax credit or a reduction in the foreign taxes paid. This has however not succeeded in curbing the conflicts of taxation as dispute more often than not; arise from the differences in basic tax principles and taxing methods or rights[99].

International double taxation may be economic or juridical. Economic double taxation arises in international taxation when the same economic transaction, item or income is taxed in two or more countries during the same period, but in the hands of different taxpayers[100] while juridical double taxation is a situation whereby, two or more States levy their respective taxes on the same entity or person on the same income and for identical periods[101].

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[96] n 10, above, 10

[97] P Baker Double Taxation Conventions and International Tax Law: a Manual on the OECD Model Tax Convention on Income and on Capital of 1992 (1994).

[98] n 93 above, 44

[99] n 93 above, 44

[100] as above

[101] n 93 above, 44

The most highly recognised solution thus far, to the issue of international double taxation and the conflicts that come with it is the establishment of rules through double taxation treaties to govern international transactions and taxations between two countries.

4.5 Concept of double taxation

There are two main concepts of international double taxation provided by the OECD Model Tax Convention on taxing an individual and corporation. International taxation issues revolve around these concepts that are also fundamental reasons/causes of international juridical double taxation.

These two concepts are known as the concept of source and the concept of residence. Both concepts stem from domestic tax law provisions, which distinguish between two types of taxpayers – non-residents and resident taxpayers[102].

The first category of taxpayers generally has limited connection with the country in question; however, the income received by these taxpayers must be generated from the country in question, making it a source country. This country wishes to levy tax on this taxpayer, however only in respect of the income originated therein (having source in this country) – referred to as source taxation and sometimes known also as limited tax liability. The second category of taxpayers would have a close personal and economic connection with the country in question and the country chooses to tax this taxpayer on his/her worldwide income referred to as worldwide taxation and sometimes known also as unlimited tax liability.[103]

The jurisdictional principle based on the tax object (source, situs) and tax subject (residence, nationality) was developed initially for individuals in the context of the personal income tax. Subsequently, States also invoke these principles, in asserting the right to tax juridical persons or other entities, such as corporations and trusts. All States invoke the source and residency or nationality principle in taxing corporations and other taxable legal entities.

Usually, the residence or nationality of a corporation is determined based on its place of incorporation while at other times it is determined by it place of effective management as provided for in Article 5 of the OECD model law. The OECD MTC defined place of effective management as a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term permanent establishment includes especially: a place of management; a branch; an office; a factory; a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. The determination of a place of effective

[102] Article 5 OECD Model Double Taxation Convention
[103] n 93 above, 44

management can be determined using objective standards such as the place where the board of directors meet. However, issues have arisen from this standard 'and these include', instances where the board of directors meet via an online platform such as skype calls. Would the place of effectiveness be the location of the Skype providers?

4.6 Benefits of a double tax treaty

The availability of a double tax treaty has the following impacts on the inflow of FDI:

i. Increased foreign investment

By providing a clear, transparent, non-discriminatory and predictable tax environment, countries may facilitate and encourage foreign investment. It is self-evident that taxpayers looking to invest in another country will be encouraged to invest if they have confidence in the tax system of that country. There is an established link between the presence of a tax treaty and an increased inflow of foreign direct investment[104]. Provision for tax sparing under the treaty may be an added advantage to the extent that it prevents revenue forgone by the country under its tax incentives being drenched up by the country of residence of the foreign investor.

ii. **Flow-on benefits to local economy from increased foreign investment**

Increased foreign investment can have many benefits for a developing country in addition to increased revenue, such as higher economic growth, transfer of knowledge and skills, infrastructure building, increased employment and higher standards of living.

iii. Increased certainty

Foreign investors and the tax administrations in their country of residence welcome the certainty and stability that tax treaties provide. Even where there is little cross-border investment, 'for example' in treaties between developing countries, especially those between neighbouring countries or members of a regional economic community, tax treaties can provide the benefits of increased certainty with respect to taxation, and may resolve disputes that may arise between the two countries. The existence of a treaty facilitates and encourages cross border investment flows and economic activities between the two countries.

iv. Protection for investment abroad

Although there may be little or no investment abroad by a country at the time at which a treaty is negotiated, such outbound investment may grow as the country's economy develops. Because tax treaties are usually of long duration (often 15 years or more), treaties will provide

[104] A Pickering Why Negotiate Tax Treaties (2013)

certainty, protection from tax discrimination and relief from double taxation for future investment by residents of a developing country into treaty partner countries.[105]

v. Avoidance of fiscal evasion

Tax treaties help tax administrations to ensure that taxpayers do not escape taxation by moving capital abroad, or by not declaring income earned abroad, or by participating in abusive tax avoidance schemes. Exchange of information and where provided, assistance in the collection of tax debts help to protect the revenue and to ensure the integrity of the tax system in both countries.

4.7 Double taxation in Nigeria

Nigeria's double taxation treaties have not been enough to attract the inflow of FDI. Currently, Nigeria has double taxation agreement with only thirteen countries[106] of the world of which, two of the treaties are yet to be domesticated by the National Assembly. According to the provision of the Constitution of the Federal Republic of Nigeria[107], every treaty signed must be domesticated by the National Assembly before it can be fully functional. This is referred to as the dualistic principle of transformation where both the domestic law and the international law are given separate identity and the requirement of domestication must be satisfied before the international law can have the full force of law[108].

Under international law, tax treaties carry the obligation to ensure that they have the force of domestic law. In some countries, the monistic principle is adopted in linking and subordinating the domestic law to the international law under the doctrine of incorporation while some prefer the dualistic principle of transformation[109].

Nigeria adopts the dualistic approach towards tax treaties. Domestication in Nigeria is the process of adoption of the treaty into the Nigeria system by the legislation. Nigeria's most recent double tax treaties between South Korea and Mauritius are yet to be domesticated, which means literally Nigeria has double tax treaties with only eleven countries in the world. This is outrageously low compared to other countries like the UK with 131 double tax treaties, China, Dubai with 60 double tax treaties, Canada, Singapore with 67 and a host of others

[105] n 104 above, 47
[106] n 10 above, 10
[107] The Constitution of the Federal Republic of Nigeria, 1999' (as set out in sec 12 of the constitutional Law Act)
[108] n 93 above, 44
[109] n 93 above, 44

As mentioned earlier, Nigeria is faced with economic recession which has given rise to political and economic instability, inadequate infrastructural facilities and backwardness in technological advancement. All these are enough to discourage multinational corporations from investing in Nigeria. The least Nigeria can do at this period of chaos is to assure investors against the possibility of double taxation by signing more DTTs. If other factors cannot be achievable in a short term to attract FDI, enacting of a DTT is attainable.

4.8 Tax treaty model in Nigeria

There are two international tax treaties model convention which serves as guidance for the enactment of tax treaties between countries. The OECD model tax convention (MTC) and the United Nations model tax convention. The OECD MTC provisions are sophisticated and tailor made for developed countries. However, the model can be used by both member and nonmembers of the OECD. The United Nations MTC on the other hand was made as a guide for the drafting of BITs between developing and developed countries.

In enacting its Double taxation treaties, Nigeria make use of the OECD Model convention on double taxation as a standard. How beneficial is the OECD standard to developing countries is an ongoing debate? This is because of the belief that the OECD MTC guidelines are more favourable to the developed countries than the developing countries.

4.9. Theories that underpin international taxation and double tax treaties

Several theories have been postulated to underpin the concept of taxation over the years. There are theories that govern the income tax as well as corporate tax. This section will focus on the ones relevant to corporate and investment taxation[110].

Competitive theory of international taxation

A country's tax system determines its status on the investment competition level. The higher the tax the lower the inflow of foreign investors and multinational companies into the economy. Investors will rather invest in countries with tax havens or low or no tax at the detriment of countries with high taxation[111].

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[110] DTT between Nigeria and United Kingdom https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500337/nigeria-dt_-_in_force.pdf (accessed 10 October 2017)

[111] DTT between Nigeria and United Kingdom https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500337/nigeria-dt_-_in_force.pdf (accessed 10 October 2017)

In line with the above, companies play off countries on tax while governments gouge each other for precious investment, national growth and scarce jobs at the expense of each other's and their own tax bases[112].

OECD attempt at curbing the act by multinational companies was the introduction of the Base Erosion and Profit Shifting of global businesses (BEPS). Another plan initiated by the European Union is the establishment within the Union of a Common Consolidated Corporate Tax Base (CCCTB). This has however not been effective as most governments are all in for the competition. Both schemes propose a focus on governments' behaviour on corporate taxes recognising that they would individually and collectively be best served by cooperating with each other to keep corporate tax rates high rather than individually defecting from co-ordination in a race to the bottom[113].

BEPS aims to get sovereign governments worldwide to cooperate to plug gaps and mismatches in national tax rules thus thwarting the tax planning strategies multinationals use to artificially shift profits to low or no-tax locations where there is little or no economic activity with results in little or no overall corporate tax being paid[114]. On the other hand, CCCTB was initiated to dilute tax sovereignty, replace national rules and systems with a single EU system for computing a company's taxable income, but leaving rate-setting with governments[115].

A good tax system should see business activity in the same way a company does: a company's income for a period is its revenues minus its costs with costs fully recoverable. No government tax code meets this standard. Investment cost recovery is couched by depreciation rules of one kind or another, spread over varying amounts of time and differing between one kind of investment cost and another. Tax bases should also conform to economic rationality. In the corporate tax context, the rule is territoriality – international businesses pay their taxes in the countries where they are earned. Most OECD countries are in the territoriality camp.[116]

Multinational firm theory

Legal scholars in the field of international tax often resort to firm theory to critically address policy considerations concerning the international allocation of taxing rights. The most widely known theory of the firm which is invariably cited by such scholars emphasizes the reduction of transactional costs to scale, grounded on a 1937 article by Ronald Coase "The Nature of the

[112] M Kennedy Jablonski's Theory of International Taxation (2015)
[113] as above
[114] http://www.oecd.org/tax/beps-about.htm (accessed 09 August 2017)
[115] n 112 above, 50
[116] as above

Firm''. Such theory is commonly used to debate the international allocation of the right to tax residual income from synergistic multinational firms, and to address the subject of transfer pricing. The functionally separate legal entity approach (FSLE), which is instrumental to the Arm's Length Principle (ALP) embedded in Article 9 of the OECD and UN Model Conventions, is heavily influenced by or perhaps derived from views of the firm in which ownership and property rights, as well contractual law, are primary value drivers. Critics of the inherent flaws of the ALP often use the same transactional cost theory of the firm to defend unitary taxation of multinational firms and the abandonment of the ALP in favour of global formulary apportionment (GFA) or an equivalent formulary application of the profit split method. Such critics often object to the ownership and property rights views of the firm using arguments of ineffectiveness of the ALP as an anti-abuse rule, whilst raising inter-nation equity considerations.[117]

4.10. Conclusion

The chapter has succeeded in discussing the concept of taxation, the evolution of double taxation treaties as a solution to international taxation conflicts. The concepts of double taxation treaties which are the source concept and the residence concept as well as the theories that underpins taxation which include the classical economic theory, the dependency economic theory and the middle-ground theory.

The double taxation trends in Nigeria were also discussed, the number of double taxation treaties available in Nigeria and how more effort needs to be put in enacting more to attract more FDI. This chapter also examined the similarity between the OECD model convention and the DTT between Nigeria and the United Kingdom.

From this chapter, the significant importance of a double tax treaty to the inflow of FDI cannot be underestimated. Judging from the fact that countries compete in reducing their tax rates to attract foreign investor is an evidence of the fact that, double taxation treaty is an important aspect for consideration on the part of multinational companies. Therefore, the absence of a tax protection which usually comes under the umbrella of a tax treaty cannot be overemphasized.

Countries such as Dubai and Singapore have succeeded in building their economies from the surface to one of the most thriving economy in the world through the signing of a DTT with

[117] JS Romero Multinational Firm Theory and International Tax Law: Seeking Coherence. https://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Events/conferences/2016/Doctoral_mtg_2016/tavares.pdf (accessed 10 August 2017)

countries to attract foreign investment. An analysis of the growth of these countries will be done in subsequent chapters.

CHAPTER 5

THE INTERFACE BETWEEN DOUBLE TAXATION AGREEMENT AND THE INFLOW OF FDI INTO NIGERIA

5.1 Introduction

In the previous chapters of this research, the emergence of double tax treaties as one of the solutions to international tax conflicts and the importance of a tax treaty as a key driver of the inflow of FDI were discussed. The significant contribution of FDI inflow to emerging economies, the influence of FDI on the economic growth of Dubai and Singapore and several factors that contributed to the inflow of FDI into these economies were revealed. The factors include infrastructural development, investment policies, absence of tax, and availability of double tax treaties amongst others.

As indicated above, the contributing factors to FDI inflow are numerous notwithstanding, this research focus is on the availability of a double tax treaty as one of the major factors to the inflow of FDI. Having discussed the importance of the two key words in this research, i.e. double tax treaty and FDI, this chapter will articulate the interface between the two stating clearly the impact a Double Tax Treaty (DTT) will have on the inflow of FDI into Nigeria.

5.2 The impact of DTT on the inflow of FDI into Nigeria

As discussed in chapter two of this research, one of the menaces of cross border investment is the double taxation of foreign-earned income. Double taxation arises, if the same tax base (e.g., income or wealth) of a specific taxpayer (i.e., a person or enterprise) is taxed in two or more jurisdictions[118]. Therefore, the presence of tax treaties reassures foreign investors on how they are taxed with their overseas profits and this, in turn, may attract FDI.

An increase in FDI is a desirable policy goal for both developing and developed countries. Thus, double tax treaties (DTT) are mainly signed to overcome the problem of international double taxation, to coordinate national tax systems in bilateral or multilateral economic interactions[119] and to serves as an instrument to facilitate international economic flows for capital and to attract foreign capital.

Internationally, the importance of tax treaties has increased tremendously. The number of treaties in force has risen from 100 in the 1960s to more than 2,500 in the 2000s, currently,

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[118] n 93 above, 44

[119] http://econpapers.repec.org/paper/sekiacpro/2504045.htm (accessed 28 August 2017)

more than 3,500 of tax treaties are in force[120], and there is almost no country which is not a party to a tax treaty.

Most of the tax treaties are based on model conventions established by international organizations, such as the OECD or the United Nations, the former was designed to favour developed countries and mostly, the residence country against the interest of the host country, while the latter was tailored specifically for the least developed and the emerging countries.

It is pertinent to note that, the elimination of double taxation is not the sole objective of double tax treaties. Tax treaties are usually saddled with additional objectives which depend largely on the economic and legal circumstances of each treaty partners. The preamble of the OECD Model Tax Convention on income and capital emphasizes on two major objectives: the alleviation of double taxation and the restriction of tax avoidance[121]. The treaty partners can then decide to focus on either or both objectives while making their treaty.

The OECD Model provides for three methods of international tax assignments which lowers the overall tax burden of multinational enterprises. For instance, the assignment of taxing rights via tax exemption (Art. 23A OECD Model) or tax credits (Art. 23B of OECD Model), or the agreement on maximum withholding tax rates (e.g., for dividends paid from foreign subsidiaries). Under the credit method, foreign-earned profits are taxed in both the parent and the host country, but the taxes paid abroad are deductible from the domestic tax liability. Under the exemption method, in contrast, domestic and foreign profits are taxed separately within their jurisdiction. A third method, though not proposed in the OECD Model, is the deduction method, which allows a deduction of foreign taxes from the domestic tax base.

Double tax treaties have been listed as one of the factors that attract FDI inflow into a country. It is widely accepted by policy-makers and scholars that tax treatment of both host and home country to investments and their returns have an influence on FDI inflow. Therefore, to attract foreign investments and to facilitate cross-border activities, countries have been advised to sign double tax treaties (DTT) with each other. This is because DTTs have been considered to overcome two important problems of international taxation: 'double taxation' conventionally and fiscal evasion recently.

Opponents of tax treaties such as Eric Nuemayer in his article "Do double tax treaties increase foreign direct investment to developing countries" opines that; host countries do not benefit

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[120] K Singh & B Ilge (ed) Rethinking Bilateral Investment Treaties Critical Issues and Policy Choices. 2 https://www.somo.nl/wp-content/uploads/2016/03/rethinking-bilateral-investment-treaties.pdf (accessed 28 August 2017)

[121] OECD Model Convention on Income and Capital

from treaties by letting go of their taxing rights and incurring extra cost while enacting the treaties. However, as severe as loss of taxing rights may sound on the part of host countries, in practice there are little or no sacrifice made. This is because; a low but certain withholding tax may generate more revenue than a theoretically higher but difficult to collect ordinary assessment of passive income. Similarly, the source country's power to collect the tax it may wish to impose on non-residents' capital gains on assets other than land or on business income where the enterprise has no permanent presence in the country may be largely an illusion. Giving up taxing rights over these categories of income may involve relatively little revenue sacrifice. Also, in situations whereby taxing rights have been given off, host countries have the chance of benefitting from the infrastructural development and job creation that comes with foreign investment.

The significant of a double tax treaty in attracting FDI maybe two-third overall considering there are other factors that should be put in place by the host countries. However, this research is submitting that a double tax treaty is the number one factor that should be checked. The presence of a DTT does not only assures the investors of stability and economic security, it also, most importantly, eliminate the possibility of being taxed twice on the same income which is the major concern of foreign investor as they are out to make maximum profit.

For Nigeria, at a time of recession and consideration for diversification, in as much as a DTT may suggest the loss of revenue in certain type of taxes, it will most definitely, help the economic growth in other areas such as the job creation, infrastructural development, technological transfer which are all not sufficiently available in Nigeria. In addition, Nigeria must also change the method of drafting their taxing assignment in their DTTs to make it beneficial to them as host state; this will be discussed in subsequent subsection.

5.3 Nigeria DTT and the need to amend

Taxation is a significant consideration for foreign investors who seek to do business in Nigeria. This is in addition to other factors such as security, availability and access to power, rule of law, economic stability amongst others.

Double taxation of income is an inevitable risk for multinational companies with cross-border investments/operations. They are always in search for new markets offering the best margins to invest in various economies outside their home countries/ markets. This makes double taxation a clear and present risk exposure for such businesses.

To promote world-wide economic development and to lessen the effects of double taxation on companies, the Organization for Economic Cooperation and Development (OECD) and the

United Nations developed model Conventions on Income and Capital. These models define the principles of permanent establishment, allocate taxing rights amongst nations and provides basis of information sharing and dispute resolution between contracting states.

In Nigeria, the taxing authorities have based most of the current double tax treaties formulated with other countries on the OECD Model Convention. Nigeria currently has DTTs with thirteen countries[122] namely: The United Kingdom, The Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, Mauritius, South- Korea and Italy. All the treaties are comprehensive except the treaty with Italy which covers Air and shipping agreement only.

The National Tax Policy (NTP) of Nigeria has identified international and regional treaties as one of the ways of attracting foreign direct investments to Nigeria[123]. Therefore, it is imperative that Nigeria leverages on its status as the largest economy in Africa by signing more double tax treaties with other countries, taking advantage of the benefits DTTs offer.

It is worthy of note that Nigeria's 13 double tax treaties is a far cry from the number which other developed and developing countries have. For instance, the UK currently has DTTs with 131 countries, Canada has 92 DTTs and Malaysia has 68 DTTs. There is a positive interface between DTT and the level of foreign direct investment inflow to Nigeria. Consequently, to accelerate Nigeria's growth to being one of the top 20 economies in the world, Nigeria must widen its current DTT network.

Currently, efforts are being made by the federal government of Nigeria through the Federal Inland Revenue Service (FIRS) in developing a new model tax treaty which would make the establishment of new DTTs much easier and portray Nigeria as a business-investment friendly environment. In addition, more of these efforts must be made by Nigeria, as the ones being made are not sufficient enough and inconsequential to efforts made by countries like Dubai and Singapore in drafting their DTTs and attracting FDI. A good example is the recent launch of the FDI monitor in Dubai. Nigeria must certainly increase its efforts in attracting more FDI and in drafting its DTTs.

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[122] https://www2.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/improved-double-tax-arrangements-in-nigeria.html (accessed 30 August 2017)

[123] http://allafrica.com/stories/201408251049.html (accessed 30 August 2017)

5.4. Section 12 of the Constitution and the delays in ratification of the treaties

In Nigeria, when treaties are signed with other countries they do not automatically have the force of law. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria expressly provides that before a treaty between Nigeria and another state shall have the force of law, it must be enacted into law by the National Assembly. This is called the principle of dualistic transformation of law.

Nigeria currently has 2 DTTs that are yet to be ratified one with Mauritius and South Korea. These treaties are long overdue for ratification and do not portray Nigeria as a nation willing to improve its partnership with its economic partners. For instance, the treaty with Mauritius was signed in 2012 that is 5 years of non-ratification and missing out in the inflow of foreign direct investment. A delay in the ratification of any treaty would give room for uncertainty amongst the treaty's stakeholder and ultimately, holds back the flow of foreign investment into Nigeria.

In a period where the nation is hit with recession and the federal government is trying to encourage the inflow of foreign investment into Nigeria, an uncertain and unserious business environment is the last thing the Government needs to portray itself as; foreign direct investment and uncertainties are two opposite sides of a coin. Therefore, it is highly advised and important that Nigeria speeds up the process of ratifying the already signed treaties as time is of the essence in bringing in foreign investment.

Invariably, if the process of ratifying a treaty is becoming seemly impossible for the National Assemble, an amendment of section 12 of the Nigeria constitution to eliminate the dualistic principle of transformation, before a treaty can receive the force of law should be recommended.

5.5 Redrafting DTTs to benefit Nigeria

Countries enter DTTs on the basis that it would ultimately be beneficial to both of their economies. However, this is not always the case as some countries seemed to have benefitted more than the other from DTT arrangements. It is imperative therefore, that the federal government review the tax treaties it currently has with other countries to determine if Nigeria is truly benefitting from these DTTs. Where it is established that Nigeria is not, the key clauses of the treaty should be amended and subsequent treaties must be signed with the aim of accruing some benefit to Nigeria.

Tax treaty is one area where Nigeria has unfortunately not achieved commensurate growth as witnessed in other tax jurisdictions. The growth of double taxation agreements between countries globally impacts on the flow of foreign direct investment. Therefore, Nigeria must leverage strategically on its status as the 26th largest economy in the world and one of the biggest in Africa by proactively harnessing its every potential, promise and prospects in the Continent and globally through useful economic partnerships enshrined in double tax arrangements.

5.6 The Dubai, UAE tax treaties

The first double taxation avoidance agreement was signed between the United Arab Emirates and France. Since then, the Emirates, including Dubai, have signed approximately 60 double taxation treaties with countries across the world[124].

Most of Dubai's agreements for the avoidance of double taxation are drafted to be suitable for both parties and they usually contain: the taxation of income of individuals and companies, as most agreements cover the income taxes applies by the contracting states, methods of elimination of double taxation which are usually different for each country, reduced tax rates for certain types of incomes, tax reductions for investments made by the governments of the contracting states, exemptions for the taxes levied on air transportation and shipping to mention a few.

All double taxation agreements are created so that Dubai has a better international relation with its economic partners and also assures foreign investors of stability and readiness to attract foreign investors.

5.7 Singapore tax treaties

Double tax treaties have help to widen Singapore's economic space and strengthen its position as a hub for business. Currently, Singapore has 60 comprehensive DTTs and 7 limited DTTs in force[125]. Although each DTT concluded by Singapore has specific terms and may differ from one country to another. However, there are certain key general principles of a typical Singapore DTTs which includes: Scope, Definition of permanent place of establishment, Taxes covered under the DTT, Business profits, Income from employment: which are usually taxed in Singapore if the employment is exercised in Singapore unless, the employee is not present in

[124] https://www.dubai-lawyers.net/double-tax-treaties-in-dubai (accessed 1 September 2017)

[125] http://www.mof.gov.sg/MOF-For/Individuals/Tax-Treaties-Double-Taxation-Agreements (accessed 1 September 201)

Singapore for more than 183 days in a tax year, Self-employed persons, the right to tax capital gains, Tax credit amongst others.

The methods of relieving double taxation are given either under a country's domestic tax laws or under the tax treaty. The available methods in Singapore are a: Tax Credit, Tax Exemption, Tax Exemptions for Individuals, Reduced Tax Rate, Relief by Deduction, Tax Sparing Credit. The creation of DTTs in Singapore has further strengthens their international relations with their economic partners, the ease in their DTTs has portrayed them as one of the economies ranked high on the ease of doing business in the world[126].

5.8 Conclusion

This chapter discussed the link between the availability of double taxation treaty to the inflow of FDI into the economy. It examined the impact of the availability of a DTT to the inflow of FDI into Singapore and Dubai by briefly examining the provisions of the two countries DTTs. This chapter also discussed the importance of having Nigeria draft its DTTs to benefit it as the host country. Also, the need to amend the section 12 of its constitution which talks about domestication of treaties before they can have the force of law. This research is proposing amendment of section 12 because there has been a delay in the domestication of treaties by the Nigerian National Assembly. This delay portrays Nigeria as unwilling to carry out transactions with economic partners.

After the discussion in this chapter, the significant contribution of FDI to the economic growth of nations cannot be overemphasised. Its benefits and impact especially in emerging countries have led government in entering a race to the bottom whilst trying to attract FDI. Several factors have been said to contribute to the inflow of FDI which include: presence of DTT, economic stability, updated infrastructure, friendly investment policies to mention a few.

Several scholars and authors have concluded that the presence of a DTT is the most important factor for attracting FDI while opponent of DTTs believe the availability of DTT is insignificant without the presence of others economic and political factors. However, this research is postulating the view that, in as much as there are several factors that contribute to the inflow of FDI, the availability of DTT is the number one factor considered by foreign investor. This is because their main aim as investors is to maximize profit and this can only be guaranteed with the assurance of not being taxed twice on the same income.

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[126] http://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=NG-AE-SG (accessed 25 August 2017)

Nigeria, though one of the countries with the largest economies in Africa has not attracted sufficient FDI to boast its economic growth or contributes to its predicament in its period of recession. This has been attributed to its inadequacy in establishing DTTs with other countries. DTT with just 13 countries out of 195 countries of the world is a far cry for a country with one of the largest economies in the world.

Conclusively, Nigeria is admonished to consider the establishment of DTT with more countries to attract more FDI into the country and, also, to set up foreign investment in those countries to enable its gradual movement into the international market.

CHAPTER 6

CONCLSUION

6.1 Summary of findings

The central preoccupation of this research has been to emphasize the impacts of the inflow of FDI into economic growth and development as well as the role of a double tax treaty in attracting foreign direct investment into Nigeria. In buttressing this objective, there are six different chapters to explain each concept. Chapter one of this research, being the introductory chapter presented an overall idea of what the research intends to achieve and how it set out to achieve it. This chapter comprises of the background to the study, the research questions the research intends to answer, the research problems, thesis stamen, the justification for the research, the method to be adopted in completing the research and chapterization that gave an outline of the flow of the research. This chapter also did a review of the articles of different authors about the research topic.

Chapter two examined the theoretical framework surrounding this research. The classical economic theory, the dependency theory and the middle ground theory of FDI. This chapter concluded that in as much as there are disadvantages of FDI to the economic as discussed under the dependency theory, the advantages are more than the disadvantages.

Chapter three examined the impact of FDI to economic growth and development. It started with a broad explanation of the concept of foreign investment, its definition, types and subsequently, narrowing it to the importance of FDI as a type of foreign investment. This chapter further discussed the significant contribution of FDI to economic growth, using UAE, Dubai and Singapore as an example of countries that turned the fate of their economies around from the inflow of FDI. The importance of FDI cannot be overemphasized as both developing and developed countries are all in the chase of attracting FDI.

Particularly, the importance of FDI inflow to Nigeria at a time when it seeks to diversify from being an oil based economy due to its ongoing economic recession was discussed. However, the lackadaisical attitude of Nigeria to the inflow of FDI has been a major obstacle. This was aptly described by Olawale Ogunkola and Afeikhena Jerome in their article “Foreign Direct Investment in Nigeria: Magnitude, Direction and Prospects” where they discussed the policies Nigeria has put in place to attract FDI, the inconsistencies with the policies and the vigour with which these policies have been pursued. Essentially, they concluded that Nigeria has made little progress in attracting FDI which sounds paradoxical given that Nigeria has one of the

biggest economies in the Africa. When related to the size of its economy, it becomes apparent that the volume of FDI received is rather small, hence, there is need for a proactive policy towards FDI that involves the upgrading of national laws and incentives that are in conformity with international practices.

Chapter three concluded by admitting the importance of attracting FDI into Nigeria and the need for investment policies that portrays Nigeria as an investment friendly nation. Whereas, the number one policy being the establishment of more DTTs with developed and developing countries of the world.

Chapter four of this research considered issues bordering around double taxation. It started by examining taxation and its importance, after which the emergence of cross border investment leading to international taxation conflicts was developed. The establishment of double tax treaties by international organisation such as the OECD and the UN as a solution to the problem of international taxation conflicts was discussed. It further buttresses the significant contribution of the availability of DTTs to the inflow of FDI. This is because it eliminates the issue of being taxed twice which is an investor major concern as investors are out to make profits. It also solves the problem of international tax conflicts between countries, who tax what and why?

Authors like Eric Nuemayer in his article "Do double tax treaties increase foreign direct investment to developing countries" believe double tax treaties make little or no difference to the inflow of FDI without the presence of other factors such as available infrastructure, economic and political stability, and advance technology amongst others. He however did not bear in mind that most developing countries are still struggling to develop several of these other factors that attracts FDI; hence, the availability of a double tax treaty is their greatest weapon in the fight to attract FDI by developing countries.

As J Giovani has rightly pointed out in "What drives capital flow: the case of cross border M&A'' a tax treaty is accompanied by cross border investment activities and this led to the conclusion of the chapter on the note of admonition, encouraging Nigeria of the need to have more DTTs to attracts more FDI in its period of economic recession.

Chapter five serve as the connecting factor between the two key words of this research i.e. Double tax treaties and foreign direct investment. This chapter discussed the interface between the availability of a DTTs and the inflow of FDI into Nigeria, focusing particularly on the impact of FDI to emerging economies and the possible contribution of FDI to Nigeria's economic growth. In addition, it also discusses why Nigeria needs to sign more DTTs with

other countries of the word to encourage the inflow of FDI. Recently, Nigeria has DTTs with about 13 countries out of 195 countries. This is a far cry for a country with one of the largest economies in Africa.

Compare to countries like Dubai and Singapore with lesser natural resources, Nigeria should not be struggling with economic recession, however, if Nigeria's natural resources have not been able to elevate it from its recession, Nigeria can look to attract FDI to build its economic as did by Singapore and Dubai.

6.2 Conclusion

There are several factors that will encourage the inflow of FDI they include economic stability, friendly investment policies, political stability, availability of infrastructure, advancement in technology, absence of tax, availability of incentives amongst others. However, this research's focus is on one key factor which is the signing of double tax treaties.

As significant as this other factor are, this research places the availability of a double tax treaty as the leading factor, this is because investors are out to maximise profit which is not achievable with the possibility of being taxed twice on the same income.

Conclusively, this research admonishes Nigeria to not take lightly the significant contribution of double tax treaties to the inflow of FDI.

6.3 Recommendation

From the flow of discussion in this research, the following recommendations are proposed:

- Nigeria announced its desire to diversify from being solely oil based economy due to the recent decline in oil price and reduction in the exportation of crude oil, this research proposes the attraction of more FDI as a means of diversification.

- Having discussed the impact of DTT on the inflow of FDI, Nigeria's 13 DTT, is no equal to its status as one of the largest economies in Africa, therefore, this research recommends the establishment of more DTTs with other countries of the world, to encourage investor of the elimination of double taxation.

- While several efforts are being made to improve Nigeria taxation system, there is still room for improvement, especially with the enactment a double tax treaty that will benefit Nigeria as host economy.

- Ranked by the World Bank as the 168th country out of 189 countries with the ease of doing business after being ranked as one of the largest economies in Africa is a failure

to Nigeria. Therefore, Nigeria must put in place more investment friendly policies, strategies and administrative procedures to ease the doing of business in Nigeria.

- The launch of technologies such as the FDI monitor in Dubai should be put in place in Nigeria to track the inflow of FDI and, also, to ensure there is an up to date record of foreign investment activities. This will enable Nigeria to be aware of which aspect of their investment policies needs to be improved on.
- Training of tax officials should be carried to empower them and enhance their drafting skills.
- Nigeria should enact easy entry procedures for foreign investors. Visa, Business permits, land acquisitions and other requirements to start a business should be made easy to serve as an encouragement to foreign investors.
- The process of ratification of BITs within Nigeria is not proactive and not well organised. The Nigeria government must enact more proactive, coordinated and energetic approach to ratification of BITs
- There are no explicit legal provisions granting national treatment to foreign investors in Nigeria except for those provided for in the BITs. Therefore, Nigeria is admonished to enact laws that provides for the fair and equitable treatment of foreign investors.
- The drafting, conclusion and ratification of double taxation treaties should be pursued more energetically with key investment to enhance Nigerian business.
- The Nigeria government should place more focus on attracting FDI into the manufacturing sectors and the backbone services to enhance their growth and development.
- The research proposes the establishment of more special economic zones (SEZ) on areas such as intellectual property, power and transportation. This will encourage inflow of FDI into the non-oil sectors.
- Nigeria must develop a strategy to attract more FDI inflow to non-oil sectors.

ANNEX A

PROVISIONS OF THE OECD MODEL TAX CONVENTION AND THE DTT BETWEEN NIGERIA AND THE UNITED KINGDOM

This subsection will briefly look at some of the provisions of the OECD MTC and the provisions of the DTT between Nigeria and the United Kingdom. This is done to show the similarity between the Nigeria DTT and the OECD MTC.

OECD Model Tax Convention

ARTICLE 1, Persons covered

This Convention shall apply to persons who are residents of one or both Contracting States.[127]

ARTICLE 2, Taxes covered

This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied

There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation

The existing taxes to which the Convention shall apply are in particular: a) (in State A): (in State B)

ARTICLE 5, Permanent establishment

For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term “permanent establishment” includes especially: a) a place of management; b) a branch; c) an office; d) a factory; e) a workshop, and f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resource

A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months

Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include: a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display

[127] Organisation for Economic Cooperation and Development (OECD) Model Tax Convention

or delivery; c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise; e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this.

ARTICLE 6, Income from immovable property

Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise

ARTICLE 7, Business profits

Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

For the purposes of this Article and Article [23 A] [23 B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under

the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the auxiliary character.

Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other. 4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 9, Associated enterprises

Where a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

The DTT between Nigeria and United Kingdom

This subsection will examine the provisions of the DTT between Nigeria and the United Kingdom, thereby determining which MTC it follows and how beneficial it is to Nigeria.

Preamble

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria; Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains

ARTICLE 1 Personal scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States

ARTICLE 2 Taxes covered

The taxes which are the subject of this Agreement are: (a) in the United Kingdom: (i) the income tax; (ii) the corporation tax; (iii) the capital gains tax; and (iv) the petroleum revenue tax;(hereinafter referred to as "United Kingdom tax"); (b) in Nigeria: (i) the personal income tax; (ii) the companies' income tax; (iii) the capital gains tax; and (iv) the petroleum profits tax.

ARTICLE 5 Permanent establishment

For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term "permanent establishment" includes especially: (a) a place of management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; (g) a building site or construction or assembly project which exists for more than three months; (h) the provision of supervisory activities for more than three months on a building site or construction or assembly project; and (i) installation or the provision of supervisory activities in connection therewith incidental to the sale of machinery or equipment where the charges payable for such activities exceed 10 per cent of the free on board sale price of the machinery or equipment.

ARTICLE 6 Income from immovable property

Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case

include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 Business profits

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than

towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

ARTICLE 9 Associated enterprises

Where (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

From the provisions of the OECD and the DTT between Nigeria and the United Kingdom, it is apparent that Nigeria follows the OECD model convention in drafting its DTTs. This research proposes a check in the provisions of Nigeria's DTTs to be more beneficial to Nigeria as the host country.

Bibliography

Articles

AA Hamdani, FDI, Economic Performance and Technological Spillover Effects: Evidence from UAE (2017) School of Economics, University of East Anglia)

Gorg H & Greenaway D 'Much Ado About Nothing? Do Domestic Firms Really Benefit from Foreign Direct Investment' (2003) 18 Internationalisation of Labour market Research Paper, 944.

Books

Baker, P Double Taxation Conventions and International Tax Law: A Manual on the OECD Model Tax Convention on Income and on Capital of 1992 (1994). London: Sweet & Maxwell.

Croome B *et al,* 'Tax Law. An Introduction' (Juta Publishing Ltd: Cape Town 2013)

Dunning HJ & Lundan SM Multinational Enterprises and the Global Economy (Edward Elgar Publishing Ltd: United Kingdom 2008)

Olaiya, TA Tax Administration and Burden of Governance in Nigeria and Ghana: A Comparative Analysis. (2011) Lambert Academic Publishers (Germany)

Isenbergh, J International Taxation. (2005) New York: Foundation Press

M Sornarajah, The International Law on Foreign Investment. (2004) Cambridge U.K.: Cambridge University Press.

Rohatgi R 'Basic International Taxation' (2002) London: Kluwer Law International.

SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Targets, Impacts and Potential. (African Economic Research Consortium: Kenya 2006).

Smith A and Mazlish B, The Wealth of Nations. (2002) Bantam Classic ed. New York, N.Y.: Bantam Classic.

Chapters in Books

Ogunkola, O & Jerome, A 'Foreign direct investment in Nigeria: Magnitude, Direction and Prospects' in SI Ajayi (ed) Foreign Direct Investment in Sub-Sahara Africa: Origins, Target, Impact and Potential (Kenya 2006).

Journal Articles

Neumayer, E ‘Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?’ (2007), 43 Journal of Development Studies 8.
Norregaard J & Khan TS ‘Tax Policy: Recent Trends and Coming Challenges (2007) 3
A Pickering, Why Negotiate Tax Treaties (2013)
Giovanni, J ‘What Drives Capital Flows? The Case of Cross-border M&A Activity and Financial Deepening’ (2005), 65 Journal of International Economics 1 127-149
Goldin AI & Reinert AK ‘Global Capital Flows and Development’ (2005) 14 Journal of International Trade and Development 453
Ojong, CM *et al* ‘Determinants of Foreign Direct Investment Inflow to Nigeria (2015) Journal of Humanities and Social Science 34-43
SH Khan & S Agha “Impact of FDI in U.A.E over the Main Elements of Sustainable Development: Economy and Environment (2015) 7 Journal of Emerging Trends in Economics and Management Sciences 263-267 http://jetems.scholarlinkresearch.com/articles/Impact%20of%20Fdi%20in%20U.A.E%20over%20the.pdf (accessed 23 August 2017)

International Conventions

Organization of Economic Co-operation and Development (OECD), Benchmark Definition of Foreign Direct Investment. Fourth Edition, (OECD Publishing: Paris 2008).

OECD 2014, Fundamental Principles of Taxation in Addressing the Tax Challenges of the Digital Economy (OECD Publishing: Paris 2014) http://www.oecd-ilibrary.org/docserver/download/2314251ec005.pdf?expires=1494092085&id=id&accname=guest&checksum=75E51810195AFED378360B1AAACBE761

OECD Model Convention with Respect to Taxes on Income and Capital Art 4 & 5 (OECD Publishing: Paris 2010)
United Nation Conference on Trade and Development, Geneva and New York 2000.

Website Articles

http://economicsconcepts.com/canons_of_taxation.htm (accessed 07 August 2017)
M Kennedy Jablonski’s Theory of International Taxation (2015) http://blogs.mazars.com/ireland/2015/10/02/jablonskis-theory-of-international-taxation/ (accessed 09 August 2017)

Romero, JS Multinational Firm Theory and International Tax Law: Seeking Coherence. Tavares WU Global Tax Policy Center, Vienna University of Economics and Business. https://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Events/conferences/2016/Doctoral_mtg_2016/tavares.pdf (accessed 10 August 2017)

http://www.oecd.org/tax/beps-about.htm (accessed 09 August 2017)

ASEAN Investment Report 2016 http://asean.org/storage/2016/09/ASEAN-Investment-Report-2016.pdf (accessed 25 August 2017)

Can Nigeria Escape Recession by Diversifying its Economy?' Published by The Economic Network at the University of Bristol

Deloitte Nigeria 'Improved Double Tax Agreement in Nigeria: Any Reason for Delay' https://www2.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/improved-double-tax-arrangements-in-nigeria.html (accessed 12 April 2017)

Dubai launches Foreign Direct Investment Monitor http://gulfnews.com/business/economy/dubai-launches-foreign-direct-investment-monitor-1.1708811 (accessed 24 August 2017)

http://www.studyingeconomics.ac.uk/is-diversifying-the-nigerian-economy-a-rescue-plan-out-of-recession/ (accessed on 1 May 2017

Dubai Draws 100 Billion Dollars from FDI http://www.khaleejtimes.com/business/economy/uae-draws-100-billion-foreign-direct-investment (accessed 23 August 2017)

How Beneficial Is Foreign Direct Investment for Developing Countries? June 2001 http://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm (accessed 22 August 2017)

Tax Effect on Foreign Direct Investment 2008 https://www.oecd.org/investment/investment-policy/40152903.pdf (accessed on 18 April 2017)

UNCTAD World Investment Report 2016 http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf (accessed 22 August 2017)

http://asean.org/storage/2016/09/ASEAN-Investment-Report-2016.pdf (accessed 25 August 2017)

World Bank Ease To do Business Report http://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=NG-AE-SG (accessed 25 August 2017)

World Economic Forum Report http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=ARE (accessed 25 August 2017)

Newspaper Articles

Diversifying the Economy of Nigeria' The leadership 27 August 2016 http://leadership.ng/features/548102/diversifying-the-nigerian-economy (accessed on May 2017)

Nigerian Legislation

The Constitution of the Federal Republic of Nigeria, 1999' (as set out in sec 12 of the constitutional Law

Income tax Act 104 of 1993 sec 2 (1) a & b