LEGAL ISSUES IN THE ADMINISTRATION OF VALUE ADDED TAX IN NIGERIA: AN APPRAISAL

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Abstract
Value Added Tax (VAT) is a consumption tax payable on the goods and services consumed by any person, whether government agencies, business organizations or individuals. It is a tax on spending/consumption levied at every stage of a transaction but eventually borne by the final consumer of such goods and services. There are legal issues which have sought to hinder the effective implementation of the Value Added Tax in Nigeria. These issues range from the uncertainty surrounding the Act as regards vatable and non-vatable goods and services. Also, there is absence of clarity of what constitutes basic food items for purposes of exemption. There is also a problem with the percentage of rate of VAT in Nigeria when compared with other jurisdiction. There are also problems of absence of enlightenment of the public on the need to pay VAT, lack of accurate data and inadequate of tax offices in Nigeria. These factors affect the effectiveness of tax authorities in enforcing VAT in Nigeria. The objective of this research is to appraise the legal framework for VAT as it relates to these issues and make necessary findings and recommendations for the effective implementation of Value Added Tax Act and in order to achieve the overriding objective of the Act. The researcher adopted doctrinal methodology with the use of statutes, Case law, textbooks, journal articles and Internet materials. At the end, the researcher found that the effectiveness of the implementation of the Nigerian Value Added tax is hindered by some legal issues. The researcher recommended among other things, the increase in the percentage rate of VAT and increase in the consequences for non-registration and non-payment of VAT.

Keywords: Taxation, value added tax, vatable and non-vatable goods and services, Nigeria.

1.0 Introduction
Value Added Tax (VAT) is an indirect tax on the domestic consumption of goods and services except those that are zero-rated or are not wise exempted. It is levied at each stage in the chain of production and distribution from the final sale based on the value (price) added at each stage. It is based on the taxpayer’s consumption of goods rather than his income.

This work in achieving its aim, analyzed the legal framework for administration of VAT in Nigeria by looking at the VAT rate, scope of VAT, registration by taxpayer to the revenue authorities for the purpose of remitting VAT, computation of VAT by taxpayers, vatable and

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non-vatable goods and services in Nigeria, zero-rated goods and services in both Nigeria, as well as exempted goods and services in Nigeria.

The administration of Value Added Tax (VAT) refers to the processes adopted in registering, assessing, collecting and accounting for VAT revenue. It encompasses penalties and cases of appeal associated with the making of returns arising from failure to register in line with the VAT Act. The Federal Inland Revenue Service (FIRS) is the tax authority responsible for the administration of VAT and a Federal agency responsible for the administration of federal taxes with power to do such things as maybe deemed necessary and expedient for the assessment and collection of tax due.

2.0 Scope of Imposition of Value Added Tax (VAT)
VAT is imposed and charged in Nigeria as provided under the Act. It is imposed on the supply of all goods and services other than those goods and services listed in the first schedule to the Act. If the charging provisions were to be strictly construed, VAT will be chargeable on international, inter-state, and intra-state supply of goods and services. In recognition of the need for territorial limitation of the tax to goods and services supplied in Nigeria, the FIRS Information Circular 9304 provides that supplies made outside Nigeria are outside the scope of Nigerian VAT. Even without making this qualification, it is hard to see how the tax can be administered extra-territorially considering the principle in Boucher v Lawson that no nation will take account of the revenue law of another nation. While the self-imposed limitation in the information Circular might have served good practical purpose, there is need to effect an amendment of section 2 of the VAT Act to limit the scope of the tax to supply of goods and services in Nigeria.

3.0 Vatable Goods and Services in Nigeria
3.1 Vatable Goods in Nigeria
Vatable goods and services are those on which VAT has to be paid. The Act provides that the tax shall be charged and payable on the supply of all goods and services (in this Act referred to as vatable goods and services) other than those goods and services listed in the first schedule to the Act. Vatable goods include:

➢ All goods manufactured or assembled in Nigeria;
➢ All goods imported into Nigeria;

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2 Value Added Tax (Amended) Act 2007 section 7 7(1) (2).
3 *Ibid* section 1.
4 *Ibid* section 2.
6 FIRS Information Circular No. 9304 of 20th August 1993, on Value Added Tax (VAT) item 6 (ii).
7 Cas. T. Hardw. 84, 89, 191 and *Holman v Johnson*, Cowp. 341.
➢ All second hand goods;  
➢ Household furniture and equipment;  
➢ Petrol and all petroleum products (including engine oil, grease and gas);  
➢ Jewels and jewelries;  
➢ Textiles, clothing, carpet and rugs;  
➢ Beef, wine, liquor, spirits, soft drinks and including mineral water;  
➢ Cigarettes and tobacco;  
➢ All vehicles and their spare parts, excluding commercial vehicles and their spare parts;  
➢ All aircraft, aircraft bodies and their spare parts;  
➢ Perfumes and cosmetics (including toiletries);  
➢ Soaps and detergents;  
➢ Mining and minerals;  
➢ Office furniture and equipment (including toiletries);  
➢ Electric materials of any description;  
➢ Such other goods that maybe determined by the Board from time to time as taxable goods.¹⁰

There are goods and services that are exempted from VAT. These are:
• All medical and pharmaceutical products;  
• Basic food item;  
• Books and educational materials;  
• Newspapers and magazines;  
• Commercial vehicles and commercial vehicle spare parts;  
• Baby products;  
• Fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment’s;  
• All exports;  
• Plant and machinery imported for the use in the export processing zone;  
• Plant and machinery purchased for utilization of gas in downstream petroleum operation;  
• Tractors, ploughs and agricultural equipment, and implements purchased for agricultural purposes.¹¹

Of particular importance is item 2 which is basic food items. There have been a lot of controversies on what are basic food items, since the law fails to define or provide a list of what constitutes basic food items. There has been a long standing dispute between the FIRS and some water bottlers as to whether bottled water is a “basic food” item given that it must have undergone some processing and packaging. Federal Inland Revenue Services (FIRS) also argued that packaged water is a luxury item which in their view, the law did not intend to exempt from tax.¹²

¹⁰ Ibid.  
¹¹ Ibid.  
The Federal High Court has held that water is a basic food item and therefore exempted from Value Added Tax (VAT) regardless of whether it has been processed or packaged. In its ruling, the Court\textsuperscript{13} distinguished and did not follow an earlier decision in the case of *Monamer Khod Enterprise v FIRS*\textsuperscript{14} where it was held that sale of packaged water is liable to VAT.

Furthermore, the Value Added Tax Act imposes VAT on supply of goods and services and part 1 paragraph 2 of the first schedule to the Act exempts certain goods including basic food items’ from VAT. However, the Act does not define what constitutes a basic food item. Just as said earlier, there had always been the question of whether water is a basic food item and therefore exempted from VAT. In order to address this issue, the FIRS had issued an information circular dated 1st December 2009 which contained a list of items exempted from VAT. The circular defines basic food items to include sachet water other than bottled and packaged water. In view of the information Circular and the earlier decision of the Court, the FIRS demanded VAT from some manufacturers of bottler waters and in some instance refused to issue Tax Clearance Certificates (TCCs) to them for not collecting and remitting VAT.

In *Warm Spring Waters Nigeria Ltd & Ors v FIRS*,\textsuperscript{15} the FIRS assessed one of the bottlers to pay about 1 Billion Naira for VAT on bottled water. It also withheld their TCC. The bottlers are manufacturers of bottled waters who are members of the Association of Foods, Beverage and Tobacco Employers (AFBTE). The bottlers then instituted an action against the FIRS claiming, amongst other things that:

- Water is a basic item and exempted from VAT.
- The FIRS does not have powers to amend, vary or modify the Act.
- The Information Circulars as far as they seek to modify the Act are null and void.
- The VAT assessment be discharged and that the FIRS be restrained from withholding the plaintiffs TCC for non-payment of VAT.

The FIRS on the other hand argued that:

- The issue of whether packaged water was liable to VAT was settled in Momaner’s case.
- Bottled water is a luxury good and should be liable to tax as the Act does not intend to exempt luxury goods.
- Since the Act does not exempt bottled water, a purposive interpretation should be applied to protect the revenue of the government.\textsuperscript{16}
- Packaging, processing, purification and filtration have removed bottled water from the ambit of basic food item.

\textsuperscript{13} *Warm Spring Waters Nigeria Ltd & Ors v FIRS* Unreported, Suit No: FHC/L/CS/57/2015.
\textsuperscript{14} FHC/SC/1/2004; Currently *Warm Spring Waters Nigeria Ltd & ors v FIRS*, FHC/L/CS/57/2015.
\textsuperscript{15} Supra.
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The information circular did not seek to amend the Act but to clarify it and aid the effective administration of VAT and as some of the Bottlers had collected and paid VAT they have waived their right to complain.

The Court in its judgment granted that all the reliefs of the Bottlers and in giving its decision, it distinguished the decision in Monamer’s case and held that the relevant question was whether water was a basic food item and exempted from VAT as opposed to what manufacturing process had been applied. According to the court, to begin to find out in what form an exempted item is, is to rewrite the law. The Court citing Global Marine v FIRS17 held that Information Circulars, the nature of an explanatory note cannot by any stretch of statutory interpretation override or supersede the clear and unambiguous meaning of any statutory provision. The Court was also of the view that the Information Circular is an administrative aid in the implementation of the Value Added Tax Act. It is therefore not law in itself, does not seek to amend same, add, or vary the clear provisions of the law. It tends to provide explanation or clarification where there is ambiguity and it cannot in itself override the clear provisions of the principal Act. It referred to the case of Halliburton (WA) Limited v Federal Board of Inland Revenue18 where the Court in that case viewed information circular as the Defendant’s opinion on point of law. Also the Court adopted the literal interpretation in constructing tax legislations. The focus is usually on the language and literal meaning of the legislation with nothing being read into the legislation or implied given that there is no equity in taxation. Tax is a pecuniary burden imposed by the state and hence tax statues ought to be construed strictly according to the language used.20

In conclusion, the Court held that water being a basic food item, was not a luxury good and therefore not liable to VAT.

3.2 Vatable Services in Nigeria

All services rendered by a person in Nigeria except those specifically exempted under the law are subject to Vatable Examples of Vatable services are services rendered by Lawyers, Engineers, Accountants, Contractors and Consultants etc.21

In arriving at what constitutes financial services, a distinction is made between activities that constitute a return on investment and the consumption of services rendered by financial institutions. Charges arising from the consumption of services rendered by banks and financial institutions ordinarily are subject to VAT and these include:22

❖ commissions and fees charged on foreign exchanges or remittances;
❖ banks charges, commissions on turnover, ledger fees and so on;
❖ arrangements and other fees chargeable on leasing activities;

18 [2013]11 TLRN 84 at 110.
fees charged for advisory services (for example; mergers and acquisitions, financial strategy counselling and so on);
❖ fees chargeable on public/private issues;
❖ debt conversion fees;
❖ fees and commissions on asset trading;
❖ fees earned on fund management;
❖ fees and commissions earned on letters of credit/documentary collection to finance imports or exports;
❖ commissions on the sale of bank drafts and certified cheques;
❖ fees chargeable on stockbroker and trustee services and;
❖ commissions paid by an insurer to brokers, reinsurers, underwriters and other insurance agent23.

It is also worthy to note that, entertainment services are Vatable in Nigeria except as contained in the exempted services list. Catering services are also Vatable. Services provided by mechanics are Vatable even the motor or vehicle spare parts services are also subject to VAT.

In the case of electricity consumption in Nigeria who deducts VAT and how? VAT is charged on the consumer by PHCN or the electricity distribution companies and is collected also by the company who is expected to remit same to Federal Inland Revenue Service (FIRS).24 VAT at 5% should be paid on commercial rent. It should be paid by the tenant on rent paid for the use of property for commercial purposes.

4.0 Exempted Goods and Services in Nigeria

4.1 Exempted Goods in Nigeria

The Act25 provided the lists of items exempted from VAT which are:
• All medical and pharmaceutical products;
• Basic food item;
• Books and educational materials;
• Newspapers and magazines;
• Commercial vehicles and commercial vehicle spare parts;
• Baby products;
• Fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment’s;
• All exports;
• Plant and machinery imported for the use in the export processing zone;
• Plant and machinery purchased for utilization of gas in downstream petroleum operation;
• Tractors, ploughs and agricultural equipment, and implements purchased for agricultural purposes.26

23 Ibid.
24 Ibid.
26 Ibid.
4.2 Exempted Services in Nigeria
Exempted services include\(^{27}\)
- medical services;
- services rendered by Community banks, People’s Bank and mortgage institutions;
- plays and performance conducted by educational institutions as part of learning;
- all exported services.\(^{28}\)

VAT is exempted only on the primary duties of mortgage institutions and any other activities (e.g. contract execution) outside their primary banking functions attract VAT.\(^{29}\) More so, some services rendered by banks and other financial institutions that constitute a return on investment which are therefore not subject to VAT include:
- Premiums on insurance policies;
- Interest on loans, advances and overdraft facilities;
- Interest on savings accounts;
- Interest on bank deposits;
- Dividends;
- Interbank placements; and
- Profits and gains on the disposal of government securities.\(^{30}\)

5.0 Zero-Rated Goods and Services in Nigeria
The following goods and services are Vatable in Nigeria but are rated at 0% and they are:
- Non-oil exports
- Goods and services purchased by diplomats
- Goods purchased for use in humanitarian donor funded projects.\(^{31}\)

However, it is worthy to note that humanitarian donor funded projects includes project undertaken by non-government organisations, religious, social clubs or societies recognized by law whose activity is not for profit but for public interest.\(^{32}\) There are series of questions whether VAT is payable on non-oil product export? However under the Act, all exports are zero rated i.e. tax rate applicable is 0%. This means that all input VAT incurred in the production process up to the point of export is refundable.\(^{33}\)

\(^{27}\) Value Added Tax Act Cap VI Laws of the Federation As Amended 2007 section 2 first schedule part II
\(^{28}\) Ibid.
\(^{29}\) T, Fowler, ‘Frequently asked Questions and Answers on Value Added Tax’, Op.cit
\(^{31}\) Value Added Tax (Amendment) Act Op.cit section 2 First Schedule Part III
\(^{32}\) Ibid.
6.0 **Rate of Value Added tax (VAT) in Nigeria.**
Nigeria adopts the single rate of 5% of the value of all taxable goods and services\(^{34}\) which is the world lowest VAT rate.\(^{35}\) A recent attempt by the National Assembly to increase the rate of VAT to 10% was unsuccessful.\(^{36}\) Despite the avowed policy of the Federal Government to increase the VAT rate the implementation has proved to be unachievable so far due to social and political environment. The arguments of those who are opposed to the increase in the rate of VAT have always been that the FIRS should strive to expand the coverage of VAT to those who are at present out of tax net and generally increase the compliance level.

7.0 **Taxable Persons Eligible for Registration of VAT**
A vatable person under the VAT Act\(^{37}\) is a person (other than a public authority acting in that capacity) who independently carries out in any place, an economic activity as a producer, wholesaler, trader, supplier of services (including mining and other related activities) or a person exploiting tangible and intangible property for the purpose of obtaining income by way of trade or business. In other words, a vatable person is one who trades in vatable goods and services for a consideration.\(^{38}\) VAT is collected through registered persons who are known as “taxable persons.” A taxable person is obliged to register with the FIRS for VAT collection within 6months of the commencement of the Act or within 6months of the commencement of business, whichever is earlier.\(^{39}\) Failure to register attracts a penalty of ₦10,000 for the first month in which the failure occurs; and ₦5,000 for each subsequent month.\(^{40}\)

Also every Government Ministry, statutory body and other agencies of government shall register as an agents of the Board for purposes of collection of tax under the Act and every contractor transacting business with a Government Ministry, statutory body and other agencies of the Federal, State and Local Government shall produce evidence of registration with the board as a condition for obtaining a contract.\(^{41}\) For non-resident company who carries on business in Nigeria, it is expected that the company registers for VAT with the Board using the address of the person with whom it has a subsisting contract as its address for correspondence relating to the tax.\(^{42}\) The non-resident company shall include the tax in its invoice and the person

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\(^{34}\) Value Added Tax (Amendment) Act *Op.cit* Section 4.

\(^{35}\) J, K, Naiyefu, *Value Added Tax, The Facts of a Positive Tax in Nigeria* (1st edn, Kupag Public affairs, 1996) p. 18; The rate is as high as 85% on some goods and services in Kenya and Malawi, South Africa is at 14%, the rate is 17.5% in Ghana and 18% in Benin Republic respectively.

\(^{36}\) Paragraph 3 of a Bill to amend the Value Added Tax Act which is pending before the National Assembly has received stiff opposition from the Chartered Institute of Taxation of Nigeria, organized by private sector, the Nigerian Labour Congress and even the State Governments who are the major beneficiaries of the revenue from VAT; Hike in VAT rate will be devastating to industries say CITN Chief; *Daily Independent*, 27th January 2006, p. 7.


\(^{40}\) *Ibid* section 8 (2) (a) (b).

\(^{41}\) *Ibid* section 9(1) (1).

\(^{42}\) *Ibid* section 10 (1).
to whom the goods and services are supplied in Nigeria shall remit the tax in the currency of the transaction.

8.0 Value Added Tax (VAT) Assessment
The Act provides that for each year of assessment, every company or taxable person shall without notice or demand file a return of income or file a self-assessment and such particulars as by the return which may be required and in the case of a company it shall contain the audited accounts, tax and capital allowances and duly completed self-assessment form. This implies that, it is an obligation on the part of the taxpayer to file tax return. The law encourages a taxable person to make a self-assessment for purposes of paying its tax and in filing such return of income he shall also calculate the amount of tax payable. When filed within the time stipulated for filing of the return and if there is no default in payment arrangement, the taxable person will be granted a bonus of 1% of tax payable.

VAT assessment complies with the self-assessment procedure in which a Vatable person assesses himself by adding 5% to the total value of his Vatable goods and services. Unlike other types of taxes such as the Companies Income Tax. The assessed tax becomes due for payment once the Vatable invoice is issued and acknowledged. This form of assessment is applicable to both input and output Value Added Taxes. An input VAT arises when an individual purchases Vatable goods and services (local or imported) for consumption while an output VAT becomes eminent when the individual sells vatable goods and services (excluding exported items) to another person. The excess of the input VAT over the output VAT is refundable while the reverse becomes the valid VAT payable to FIRS. Though VAT assessment is self-assessment oriented, the FIRS may assess on a best of judgement (BOJ) basis if the taxpayer fails to render returns or renders an incomplete or inaccurate returns. However the tax authority must be fair in giving its best of judgment assessment.

9.0 Computation of Tax Due
The question of how much VAT is payable maybe straight forward for the final consumer who simply pays without obligation to do anything else. But this is not so far a taxable person who is an agent of collection. While a taxable person has obligation to collect tax on taxable goods and services, he is also under obligation to pay VAT on taxable goods and services supplied to him.

The tax collected by a taxable person is called the output VAT while the tax paid by him is

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43 Ibid s. 10(2).
50 A. Sanni, op cit, p. 194.
called input VAT. The VAT system is structured in such a way that a taxable person is able to take credit for the VAT paid by it on its inputs.\(^5^2\)

Moreso, a taxable person who makes a taxable supply shall in respect of that supply, furnish the purchaser with a tax invoice containing inter alia, the following:

- a. Taxpayers Identification Number;
- b. Name and address;
- c. VAT registration number;
- d. The date of supply;
- e. Name of purchaser or client;
- f. Gross amount of transaction; and
- g. Tax charged and supplied and a tax invoice shall be issued on supply whether or not payment is made at the time of supply.\(^5^3\)

10.0 Remission of Value Added Tax and Filing of Returns

This dimension of VAT administration addresses the collection and remittance of the tax element of vatable goods and services to the Federal Inland Revenue Service (FIRS).\(^5^4\) From the assessment perspective, all producers/manufacturers of goods and services, traders, companies, government agencies, ministries and parastatals are collecting agents to the FIRS.\(^5^5\) A taxable person shall pay to the supplier, the tax on taxable goods and services purchased by or supplied to the person and the tax paid by a taxable person as mentioned above shall be known as input tax.\(^5^6\) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer as the case maybe, collect the tax on those goods or services at the rate specified under the VAT Act and the tax collected by a taxable person as mentioned shall be known as output tax.\(^5^7\)

Every ministry, statutory body or other agencies of government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest local Value Added Tax Office.\(^5^8\) The Service may, by notice, determine and direct the companies operating in the oil and gas sector which shall deduct VAT at source and remit same to the Service\(^5^9\) and the invoice number, gross amount of invoice, amount of tax and month of return.

A taxable person is also expected to render to the Board on or before the 21\(^{st}\) day of the month following that in which the purchase or supply was made, a return of all taxable goods and

\(^{53}\) Ibid, section 13A (1) (a)(b)(c)(d)(e)(f)(g) & (2).
\(^{55}\) Ibid.
\(^{57}\) Ibid, section 14(1)(2)
\(^{58}\) Ibid, section 13(1)
\(^{59}\) Ibid, section 13(2)
\(^{60}\) Ibid, section 13(3)
services purchased or supplied by him during the preceding month in such manner as the Board may from time to time determine.\textsuperscript{61} Also, a person who imports taxable goods into Nigeria shall render to the Board returns on all the taxable goods imported by him into Nigeria\textsuperscript{62} and in this regard, any payment made to duly authorized government agents shall be deemed to have been made to the Federal Inland Service.\textsuperscript{63}

11.0 Conclusion

After a careful appraisal of the laws on VAT in Nigeria as it pertains to vatable and non-vatable goods and services, the rate of percentage of VAT in Nigeria when compared with those of other jurisdictions, the researcher found that the Nigerian 5\% VAT rate is very low as compared to what is obtainable in countries such as South Africa (14\%) and other foreign jurisdictions. It is also found in the course of this research that the Nigerian Value Added Tax Act of 2007 fail to define what is a basic food items or which food items can be qualified or be called a basic food items and this has resulted in series of arguments between the Nigerian taxpayers and the revenue authorities on which food items can be called basic food item. Just like in the case of warm spring waters Nigeria Ltd v FIRS, where the court held that bottled water can be classified as a basic food item.

The work also found that the Federal Inland Revenue Service (FIRS) does not have accurate data of majority of Nigerian taxpayers and this has led to the non-registration of taxpayer, failure to obtain their tax identification Number (TIN), non-filing of tax returns and non-remittance of Value Added Tax (VAT) by many Nigerian Taxpayers.

Suppliers of electronic services in Nigeria do not remit their VAT. Electronic services are services provided by means of an electronic agent, electronic communication or Internet for consideration and they include, Internet based auction services and sellers, interest based educational programs or courses, electronic games, interactive games and electronic belling or wagering, e-books, audio visual content, still images and music, and subscription services like journals, magazines, newspapers, blog, social networking services, webcast webinar, website or web application. This is not the case in South Africa, a special compulsory registration applies to the suppliers of electronic services and VAT is accounted for on a payment basis to the tax authorities. Most tax offices were these VAT are remitted are far from the taxpayers. This is one of the major causes of lack of VAT remittance by the Nigerian taxpayers.

12.0 Recommendations

12.1 There is need to increase the Nigerian VAT rate to 10\%. This will help in generating revenue for the Nigerian government.

12.2 There is need to amend the Act order to give a clear meaning of food items that can be called basic food items to avoid further controversies.

\textsuperscript{61} Ibid, section 15(1)
\textsuperscript{62} Ibid, section 15(2)
\textsuperscript{63} Ibid, section 15(3)
12.3 There is need to get accurate data of Nigerian taxpayers and mandatorily obtain their Tax Identification Number. This will enhance enforcement of payment of VAT. In order to achieve this, the Corporate Affairs Commission should work in a synergy with the Federal Inland Revenue Service.

12.4 The researcher recommends that direct labour in Nigeria should be taxed under VAT. There is also need to create awareness to the Nigerian taxpayers on need to remit their VAT.

12.5 The researcher recommends that tax offices where VAT is remitted should be opened in various markets in every local government area of all the states in Nigeria including Federal Capital Territory. This will help the taxpayers remit their tax easily.

12.6 The researcher recommends that two invoices should be created by taxpayers in order to different imported goods and home made goods to avoid double taxation. This is because VAT is paid on imported goods on the process of importation.

12.7 There should be increase in the rate of penalty for non-registration and nonpayment of VAT such as the case of China. Revocation of business license as a penalty for non-registration of VAT should be introduced. In Albania, Concealment of tax obligations attracts 100% tax amount evaded.