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Recent Development in International Taxation

Nigeria

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Recent Tax Development in Nigeria.

Nigeria witnessed a new dawn following the inauguration of a new President on May 29, 2023, the immediate past President Muhammadu Buhari signed the Finance Bill of 2023 into Law on May 28, 2023, just a day before the expiration of his tenure with an effective date of May 1, 2023, heralding new changes in the Nigeria's fiscal legislation by the Finance Act 2023. Worthy of note is the annual passage of the Finance Act which has informed several significant changes to the Nigerian tax framework, in total, 4 Finance Acts have been passed – Finance Acts of 2019, 2020, 2021 and 2023.

The amendment of the Finance Act 2023, (FA23) bothers on the following laws: Capital Gains Tax Act, Personal Income Tax Act, Company Income Tax Act, Petroleum Profit Tax Act, Value Added Tax Act, Tertiary Education Trust Fund Act, Customs, Excise Tariff Act, Stamp Duties Act, Public Procurement Act, Corrupt Practices and other Related Offences Act and Ministry of Finance (Incorporated) Act. A holistic review of the FA23 shows that the Government is more decisive on promoting tax equity by cleaning out the existing incentives regime in the tax laws. Some of the provisions in the extant laws were terminated which invariably exposes taxpayers to potentially higher taxes. A good example is the Investment Allowance and Convertible Currencies, All the waivers and exemptions provided by Sections 32, 34, and 37 of the CITA granting allowances in respect of capital expenditure incurred in certain circumstances as well as tax exemptions on income earned in convertible currencies from tourist by hotels have been repealed and no longer available for tax returns becoming due for accounting period ending on or after 1st of July 2023.

This is against the backdrop of several debates analysing the cost – benefit of various tax waivers and exemptions granted to taxpayers in the country, a recent study of tax expenditure in Nigeria has indicated a potential waiver of over N21.5 trillion within the last 2-3 years, this explains the drive for the amendment as well as the actual tax collections to boost government revenue. This is debatable as the benefits of waivers sometimes can be unnoticed making it a bit complex to measure how much of positive impact those waivers are contributing to help boost a business-friendly economy.

Section 31 of the Finance Act touches almost all categories of taxpayers however the impact of the changes on taxpayer has not been clearly measured amidst other social-economic challenges in the country. Safe to say that the policy is welcoming one however a bit of clarity around effective dates while awarding grace period for proper cut over would have been decent enough. This would also help businesses and individuals brace up for the changes ahead. Highlighted below are few other important changes flowing from the amendment of the FA23.

VAT Withheld –

The amendment of Section 14(3) of the VAT Act to the effect that persons appointed to withhold VAT shall remit that VAT on or before the 14th day of the preceding month in which the VAT was collected.

Rate on Tertiary Education Tax (TET)

TET rate was changed to 3% of assessable profits by virtue of the amendment, the new rate is effective for TET becoming due in respect of accounting period ending on or after 1st July 2023.

Fiscal Policy Measures.

The Federal Government recently introduced new Fiscal Policy Measures (FPM) via a circular signed by the Minister of Finance, Budget and National Planning, Zainab Usman. This Supplementary Protection Measures (SPM) relates to the implementation of the ECOWAS Common External Tariff (CET) 2022-2026.

The (FPM 2023) covers the following.

- Supplementary Protection Measures (SPM) for the implementation of ECOWAS Common External Tariff (CET)2022 to 2026
- Importation Prohibition list – this is only applicable to goods originating from non-ECOWAS member states
- Changes in taxes duty rates such as tobacco and alcoholic beverages
- Introduction of Green Taxes on Single Use Plastics and certain categories of vehicles.
- Import duty rate reduction on certain manufacturing items available to verifiable manufacturers.

The changes are effective May 1, 2023, and subject to 90-days grace period for importers who had opened Form M before May 1, 2023.

The FMP 2023 has reviewed and revised Import Adjustment Taxes (IATs) on certain existing items and has included seventeen (17) additional items in the IAT list.

Another important tax discussion point to note is the Import Prohibition List (IPL) for which a major highlight is the introduction of “Green Tax Surcharge” on certain vehicles. Other items on the surcharge tax list include rice, woven fabrics, ceramics tiles and sinks, steel, containers for compressed or liquified gas, aluminium cans. Others are washing machines, electric generating sets and rotary converters, smart phones, new and used passenger motor vehicles and electricity meters.

A new Excise on Alcoholic beverages, tobacco, wines, and spirits have been introduced effective from June 1, 2023.

Introduction of excise duty on Single Use Plastics (SUPs) including plastic containers, films and bags at the rate of 10%. Also, an Import Adjustment Tax (IAT) levy has been introduced on motor vehicles of 2000 cc to 3999 cc at 2% while 4000 cc and above will be taxed at 4%. Vehicles below 2000 cc, mass transit buses, electric vehicles, and locally manufactured vehicles are exempted. The new rules take effect from 1 June 2023

It is therefore unclear how the government intend to establish the enforcement of the green taxes as there is presently no legal framework / enactment to support the imposition of this levy. This makes the utilization of funds blurry and by implication, the increase in excise taxes is more than the approved rate per the 2022-2024 Road Map approved via the FPM of 2022. Impact assessment across the value chain is perceived to be unfavourable considering the recent Naira shrunk which invariable affected many businesses negatively.

A Carbon Tax System.

As part the country's commitment to the Kyoto protocols and Paris's Agreement, the federal government is working on an elaborate energy transition plan that requires about $10 billion dollars to finance and execute, this is paving the way for carbon tax policy for Nigeria to implement the new Climate Change Act 2021. The goals COP26 is aimed at a renewed commitment by countries towards securing net-zero targets by mid-century and to keep the 1.5-degree target within reach.

During the COP26, Nigeria committed to achieving net-zero by 2060, this brought about the Climate Act with the sole aim of providing a legal framework for achieving low Greenhouse gas (GHG) emissions, as well as establishing the National Council on Climate Change (NCCC) which shall have powers to make policies and decisions on all matter relating to climate change in Nigeria. The agency is to determine allowable emissions and penalties where exceeded, therefore the government under this new tax system is to set a price for greenhouse gas emissions.

Some important things to note in the Climate Act 2021

1. Private entities with over 50 employees are required by the Act to actively put in place measures to achieve the annual carbon emission reduction targets specified in the Action Plan. The Act provides for the role of a climate change officer or an Environmental Sustainability Officer whose responsibility would be to submit annual report on carbon emission reduction efforts during the relevant year.

2. Ministries, Department and Agencies (MDAs) are required to create a climate change where compliance and planning activities for MDAs are carried out.

There are notably two ways in which the federal government plans to impose these taxes.

1. An emission tax – this is measured by the amount and quantity of emissions generated by an entity
2. Tax on goods and services that are greenhouse gas intensive like carbon tax on PMS.

It is expected that the carbon tax system will encourage businesses as well as consumers to take switching steps towards a sustainable environmental pathway, revenues generated from carbon taxes can be channelled towards climate change for the overall wellbeing of the country.

Environmental pollution continues to be a major challenge in this part of the world with greenhouse gas emission on the increase, the negative impact to every sector of the economy, people, plants and animals cannot be overemphasized. , this policy has been long overdue for execution and it’s so interesting to see that the Government is finally thinking in this direction, this is a step in the right direction towards green growth and sustainable economic development which is in tandem with the objectives of the Nigeria Climate Change Act (2021). The National Council on Climate Change is tirelessly working hand in hand with the Federal Inland Revenue Services (FIRS) to bring this to fur.

Recent Development in Tax Laws and TAX Rulings.

The Tax Appeal Tribunal (TAT) and the Federal High Court have contributed immensely to upholding tax laws in Nigeria. As is expected, businesses and other corporations continuously seek redress for excess tax levies and clarity in cases where tax guiding laws and principles appear ambiguous and situations of an appearance of lacuna in tax laws. Worthy of note is the strategic positioning of the TAT in bringing justice and decorum to the tax arena. A few cases have been highlighted below as outstanding judicial precedence which has brought decisive clarity to some tax issues.

Reference to a landmark case between INT Towers VS. FIRS, where the company contested the automatic assessment of IT levy being 1% of its Profit before Tax as part of the company’s 2021 tax returns levy by FIRS.

Background -

IT levy is governed by the National Information Technology Development Agency Act, CAP N156 LFN (as amended) usually charged on specific companies with STO of NGN100million above at the rate of 1% on profit before tax. The following companies are liable.

- GSM service providers and telecommunication companies
- Cyber companies and Internet Providers.
- Pension Managers and Pension Related Companies
- Banks and other Financial Institutions
- Insurance Companies

In this case, INT's argument is that they are not a GSM service provider nor a telecom company, they are into the provisioning of facilities and infrastructures to telecommunications and as such the levy does not apply to them. Having obtained licence from NCC does not make her liable as well. FIRS on the other hand argues that based on the license from NCC, INT is then liable. The Tribunal on Friday, 3 2023 ruled that Information Technology (IT) Levy does not apply to network facilities providers. Network facility providers like INT Towers whose core business is in setting up infrastructures such as (masts, towers and related equipment) It was decided by the Tribunal that the company being a network facility provider is not liable to pay NITDA levy of 1% of PBT. The decision of the Tribunal was unequivocally a needed precedent in determining and defining a GSM service provider.

Outlook and Conclusions

The above fiscal policies, changes, and development are pointing towards one direction which is Revenue generation for economic growth, however, there has not been so much clarity on the proper allocation of tax revenues for economic projects and overall wellbeing of the people. it is expected that tax collection will be more structured and automated in the light of all the fiscal changes flowing from the Finance Act 2023 hence key revenue generating parastatals and MDAs should as well brace up to the occasion.

Most importantly is the Government willingness and deliberate effort to creating a fiscal environment that drives economic growth and national prosperity, while we hope that the new government regime becomes aggressive in chasing the prosperity agenda as well as address some of the long-standing tax issues faced by taxpayers. A quick win for the government would be.

1. End to end automation of all taxes and levies, data analytics and automated records management to solve tax collection challenges.
2. Improve legal and administrative reforms, eliminate multiple taxation, prioritising tax redress within a reasonable time frame to drive tax morale and promote transparency.
3. Develop a sustainable framework for the implementation of the new taxes being introduced to encourage performance and compliance.

There is so much to expect for the Fiscal Year 2023, taking a cue from the recent happenings in Nigeria such as the fuel subsidy removal and operational changes to Foreign Exchange (FX) Market amongst others and by extension, we hope that the Federal Government will be keen to implementing high impact fiscal initiatives that will help grow the economy, although the Nigerian Tax to GDP ratio rose to 10.86% from 6% levels according to a recent report by the Nigerian Bureau of Statistics (NBS) indicating an appreciable increase in the country's tax to GDP ratio, However compared to other notable climes such as South Africa, Brazil, Kenya etc, I believe there still much ground to cover.