POLICY IMPLICATION OF FINANCE ACT, 2020-TOWARDS TAX POLICY REFORMS AND ECONOMIC RECOVERY

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INTRODUCTION

Taxes are the most important attribute of the state;

Their main purpose is to provide financial support for the implementation of state policies that is, for the normal functioning of society and the state.

“Taxes are the life-blood of government”.

INTRODUCTION

- Tax on incomes is an important source of revenue for government.
- The basic objective of taxation is to raise the money needed to finance government expenditure.
- Tax tends to allocate resources, encourage or discourage certain kinds of economic and social behaviour, redistribute income and wealth and stimulate and stabilizes economic growth.
- Thus, starting from the necessity of collecting revenues for the government to meet its expenditure, taxation has developed into an instrument of promotion of social and economic growth, stability and efficiency and has become a major device for governments to implement their political thinking and secure the participation of the masses in their policies and programmes.
- An effectively administered tax system in the hands of the government becomes a valuable asset for all the good things and major weapon against many odds.

INTRODUCTION

- Given the many levels of taxation in Nigeria (federal, states and local governments) that most taxpayers are subject to, it is safe to say that tax laws and/or policies should be changing constantly.
- Some of these changes are minor (changing a rate or adding a deduction) while others may involve major substantive changes (changing from an income tax to a consumption tax or taxing online transactions).
- Any discussion on the modification of taxing statutes and/or rules raises the question of which process to adopt, what laws and/or rules to change and how to compare the proposed changes to either existing laws and/or rules or other possible alternatives.

OBJECTIVES OF THE ACT

- The Finance Act 2020 aims at meeting certain government objectives, they are;
- Promote Fiscal equity
- Align domestic laws with global best practice
- Introduce tax incentives in investments in infrastructure and capital markets
- Supporting MSMEs and
- Raising revenue for the government

ISSUES TO CONSIDER

- This presentation examines Tax Policy as an instrument of recovery in the current economic crises, especially after the passage of the Finance Act 2020.
- It will look at the design of a Tax Policy necessarily required to speed up recovery and contributes to long term economic growth and development of our dear nation.
- Reasonable and realistic recommendations are made at the end of the presentation.

FINANCE ACT 2020

- Nigeria's President Muhammadu Buhari, on 31 December 2020, signed the Finance Bill 2020 (the Finance Act or the Act) into law with an effective date of 1 January 2021.
- The Finance Act introduced over 80 amendments to the existing tax and regulatory legislations in Nigeria.
- These amendments were primarily aimed at addressing ambiguities and providing clarity to certain provisions in the laws, and also providing certain incentives to companies to mitigate the impact of COVID-19.

FINANCE ACT 2020

- The Finance Act 2020, which took effect on 1 January 2021, amended the provisions of 14 taxes and fiscal related legislation, namely:

- Capital Gains Tax Act (CGTA)
- Companies Income Tax Act (CITA)
- Industrial Development (Income Tax Relief) Act (IDITRA)
- Personal Income Tax Act (PITA)
- Tertiary Education Trust Fund (Establishment etc.) Act
- Customs and Excise Tariff, etc. [Consolidation] Act (CETA)
- Value Added Tax Act (VATA)
- Stamp Duties Act (SDA)
- Federal Inland Revenue Service (Establishment) Act (FIRSEA)
- Nigeria Export Processing Zones Act (NEPZA)
- Oil and Gas Export Free Zone Act (OGEFZA)
- Companies and Allied Matters Act (CAMA)
- Fiscal Responsibility Act (FRA)
- Public Procurement Act (PPA)

FINANCE ACT 2020

- The Finance Act introduced over 80 amendments to the existing tax and regulatory legislations in Nigeria
- Additionally, the Act established "*the Crisis Intervention Fund and the Unclaimed Funds Trust Fund.*"
- The Funds were setup in response to the COVID-19 pandemic and its impact on the government budget during the 2020 fiscal year, as well as to address all crisis-related expenditure/exigencies, going forward.

FINANCE ACT 2020

- The thrust of the legislation includes;
- boosting government revenue,
- preventing base erosion,
- streamlining areas of regulatory conflict,
- clarifying ambiguities in extant laws and regulations, and
- providing fiscal reliefs to small and medium enterprises and entities involved in key and/or priority areas of the economy, among others.

SECTORIAL KEY CHANGES

Agricultural sector

- The amendment to the tax laws provides for reduced tax burdens for companies in agricultural sector and reflects the commitment of the Federal Government to encourage large scale agricultural production in Nigeria.
- Some of the changes introduced are:

- Substitution of "agricultural trade or business" for "primary agricultural production."
- Exemption of interest on loan for companies engaged in primary agricultural production.
- Inclusion of small or medium sized companies engaged in the primary agricultural production in the list of pioneer industries.
- Eligible businesses, subject to the approval of the NIPC, that would be granted a tax-free period for up to six years.
- Exemption of hire, rental or lease of tractors, ploughs and other equipment for agricultural purposes from VAT.

SECTORIAL KEY CHANGES

Financial services

- Following the establishment of the Unclaimed Funds Trust Fund Legislation, Deposit Money Banks are put under legal obligation to remit the funds in dormant bank accounts of over six years into designated bank accounts as may be directed by the Debt Management Office.
- Banks are now required to charge EMTL of NGN50 on electronic receipts and transfers of money on NGN10,000 and above, as opposed to stamp duty.

SECTORIAL KEY CHANGES

Small companies

- Exemption of small companies from Tertiary Education Tax.
- Shipping and air transport
  - VAT exemption on airline tickets issued and sold by commercial airlines registered in Nigeria.
  - VAT exemption on commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.
  - Exemption of import duty on importation of aircrafts, engines, spare parts and components whether purchased or leased by airlines registered in Nigeria and providing commercial air transport services.
  - Income from leasing, containers, non-freight operations or any other incidental income earned by foreign companies deriving shipping or air transport income from Nigeria, would be subject to tax, under section 9 of CITA and not section 14.
  - For CGT purposes, only ships and aircrafts used in international traffic would fall within the scope of CGT in Nigeria, in line with 24(f) of the CGT.

SECTORIAL KEY CHANGES

Oil, gas and energy sector

- The tax holiday incentive applicable to downstream gas utilization would not apply to any company that has claimed an incentive for trade or business of gas utilization under any law in Nigeria, including the Petroleum Profits Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act in respect of the same qualifying capital expenditure.

Oil and gas free trade zone entities

- Companies registered and operating within the Zone are now required to file income tax returns in the manner prescribed under the CITA.

IMPLICATIONS

- Government's desire to ensure tax compliance and its understanding of the rapidly changing economic realities of today underscore the necessity for a continuous tax law reform.
- Some of the reforms may be cosmetic while some are clearly revolutionary.
- However, all the reforms will significantly affect the social and economic life of the country.
- And therefore, will produce significant risks in terms of the requirements of;
  - legal certainty,
  - coherence,
  - stability, and
  - predictability.

IMPLICATIONS

- The effectiveness of tax law is enhanced if its words are;
  - meaningful,
  - intelligible,
  - well thought out, and
  - **well organized.**
- The shorter the tax statute, the less effort will be required to understand it, and the lower compliance burdens will be.

IMPLICATIONS

- Elegance,
- brevity, and
- clarity of expression are therefore to be sought.

- Taxpayers should understand and trust the tax system and this can only be achieved if the tax legislations keep all the taxes;
  - simple,
  - creates certainty through considerable restrictions on the need for discretionary judgments, and
  - produces clarity.
- Tax laws should very certain, straight forward and should contain clear and understandable norms so that any form of uncertainty should not be allowed.

IMPLICATIONS

- perform its functions effectively,
  - to form a stable legal order, and
  - to direct (guide) people's behavior.

- Certainty has several benefits, like;
  - It lessens transaction costs to the taxpayer and the taxing authority,
  - It facilitates predictability and lets everybody plan his/her financial transactions, and
  - It promotes faith in the system.
- Uncertainty of legal norms allows for the possibility of unlimited and unjustified discretion in their interpretation and application, which inevitably provokes disagreements, disputes, legal conflicts.

IMPLICATIONS

- The virtues of certainty for taxation include the following:
- Certainty of tax law increases the predictability and stability of taxation, allowing each taxpayer to rationally plan their financial transactions;
- Certainty reduces the transaction costs for the taxpayer and the tax authority in interpreting tax rules and finding criteria to assess their behavior as compliant; thereby, it contributes in every way to tax compliance;
- Certainty supports completeness and consistency in the regulation of tax relations, as well as the absence of contradictions in tax law;
- Certainty promotes faith in the tax system, making the tax collection palatable if not pleasant;
- Certainty of a tax rule guarantees its correct understanding, interpretation, and application.

WAY FORWARD

- Improving tax compliance requires long-term reform efforts, beginning with;
  - strengthening the organization and management of the revenue authorities,
  - implementing robust collection systems (e.g., payment and withholding systems),
  - building capacity in core tax administration functions (registration, filing and payment enforcement, debt collection, audit, taxpayer services, and processing of appeals),
  - Taking maximum advantage of professional leverages, especially those established by Acts of the National Assembly.

WAY FORWARD

- Reform of the legal framework is necessarily required to ensure that the powers, penalty regimes, and dispute resolution processes are in place, but that should be on the long term.
- Other changes and reforms should be left the Administrative Authorities to be done through robust Policy Direction and Changes.
- This will be supported by adequate information and communications technology since it plays very critical role in compliance management (e.g., through automatic gathering of third-party information as a by-product of natural business processes;

Government can also take advantage of electronic invoices to facilitate real-time transaction monitoring and verification; and analysis of revenue risks).

WAY FORWARD

- All these can be achieved with a very good Tax Policy formulation.
- This is because Tax Policy is all the decisions and main directions that determine the characteristics of a tax system and make it possible to finance public spending and support economic activities.
- It must be stated that the basic objective is to raise sufficient revenue and ensure that revenue is raised in ways that are equitable and that minimizes the disincentive effect of taxation.
- The procedure that should guide the RTA in making the policy include;
  - Propose
  - Consult
  - Legislate
  - Implement
  - Evaluate.

WAY FORWARD

THANK YOU FOR LISTENING