
CURRENT CHANGES IN TAX LEGISLATION: STRATEGIES FOR OPTIMAL COMPLIANCE

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ABSTRACT: *The issues of tax has not been an easy one right from the time immemorial ,tax is very central to the growth of any countries economy in order to ease and facilitate tax collection a number of strategies charges were brought to force with the aim of improving the issue of tax compliance in the country. These strategies for tax legislation were meant to enforce voluntary compliance within the ambit of the law ,simply because these strategies charges was what helped some of the western and Asian countries such as Australia ,United States of America ,United Kingdom , China to achieved a high level of tax compliance level .For instance China has achieved 90 -95 %tax compliance tax compliance level among other examples while the highest in sub Saharan Africa is 72% which is south Africa and others included Kenya 54%, Uganda 56% and Nigeria still below 45%. The sub Saharan African countries come up with tax strategies charges that will ensure maximum compliance. It's against this background that this paper examines the current charges in tax legislation and strategies for optimal compliance by way of utilizing secondary sources the paper observes that the phenomenon of tax legislation and optimal compliance by the citizens is very central and important to the country's economy .The paper recommends that in exchange with the compliance of payment of the tax ,social amenities has to be provided to the citizens affordably ,such as electricity ,water supply ,health care services among others.*

KEYWORDS: Tax legislation, Strategies, Compliance

INTRODUCTION

Tax legislation entails the process of enacting re-enacting, or amending tax laws, statutes, acts or convention by the political authority with a view to legitimate, regulate and enforce compliance for tax payment as at when due. In particular there is the general consensus that tax payer's compliance will positively affect both the level and the rate of growth of tax revenue generation. From time immemorial tax collection is not a simple task; tax has to be collected with caution. Income tax or any other form of tax has not been readily accepted, where it is accepted it is not favored by members of public. Typically members of public are usually touchy about the forms, notice and letters from the tax Authority; while government place priority on maximizing highest revenue potential from taxes.

In a bid to legitimize revenue generation or tax Assessment collection and Accounting enabling laws, rules and statutes must be enacted to legitimize the entire administrative machinery for tax collection. The laws, statutes and procedures must be user friendly from which conventional and unconventional strategies are evolved to ensure maximum compliance level. The strategies are for enforced compliance and voluntary compliance within the ambit of the law; this

legislation must be in consonance with best practices, globally and at ease with economic reality of the tax base; voluntary compliance is most preferred in any progressive tax administration thus the basis of legislation and changes thereon must be seen to encourage taxpayers participation in the tax process through voluntary compliance which is the new strategy globally.

The focus and scope of taxpayer voluntary compliance in the international comparison of revenue profile 1996 – 2000 culled from the International Monetary Fund (IMF) indicate that countries like Australia, United State of America, United Kingdom, China has achieved 90 – 95% tax compliance level. While the highest in Sub-Saharan Africa is 72% in South Africa, 54% in Kenya, 56% in Uganda, 61% in Ghana while in Nigeria it is still below 45%. These scenario stimulates the Sub-Saharan African countries to re-strategized and refurbish their various tax laws and review this laws through legislations to improve compliance; for instance in Nigeria as per the 1999 constitution of the Federal Republic of Nigeria. The National Assembly had the power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the executive legislative list. This list contains subjects like incorporation, regulation and winding up of corporate bodies and the taxation of incomes, profits and capital gains.

The provision of the constitution which vest the power to make laws for the federation includes any change or amendments therefore, with good laws and necessary amendments tax payers' compliance given the rightful environment and effective machinery will be enhanced and guaranteed. Apart from the changes introduced in laws and statutes, optimal compliance can be guaranteed through the other conventional and unconventional means such as tax waivers, incentives like pioneer and differential tax rates among the taxpaying public due to operational circumstances or infrastructural availability in locations.

Thus write has two portions, the first deals with the factors and basis of change in legislation while the second part concentrate on compliance strategies that arose within these changes and convention adhered to as a result thereon. Instances and specific example of Nigerian situation or elsewhere will be made where necessary.

BASIS OF TAX LEGISLATION

The tax system is universally administered through statutes that are enacted by a competent legislature; however governments at various level and forum legislate on tax matters being the financing basis of any organized formal public structure. The common law which provides the initial basis or defines the framework of tax legislation is skewed towards British customs and tradition. Thus in the 20th and 21st century emphasis has been placed on socio-political and economic circumstances. Typically in Nigeria the basis is premixed on the federal constitution, court judgments, circulars and practices of revenue Authorities, opinions of income tax experts and related professional bodies and finally budget pronouncements of relevant ministries. There exist legislations which emanates from the political Authority in response to pressures for amendments by various stakeholders. Another form of changes in tax laws or legislation may arise as a result of reform efforts on the entire economy or in a sub-sector influenced either internally or externally. Government's globally requires to periodically effect changes in

legislation's or laws to keep in pace with the growing demand for revenue to finance developmental efforts and address dynamics of political economy.

FACTORS AFFECTING CHANGES IN TAX LEGISLATION

According to Sven Steinmo (1993) "Governments' need money. Modern governments need lots of money. How they get this money and whom they take it from are two of the most difficult political issues faced in any modern political economy". Thus from the foregoing governments or political structures are saddled with issues that borders on increasing expenditures and the means of financing them. The initiation and implementation of changes in tax laws and legislation and or reforming the administrative machinery is the sole responsibilities of governments. However there are issues, structures and socio-economic and political factors that play a vital role in driving this change internally or externally. However, the following factors are brought to highlight for consideration:

- a. Changes in the political structure and the realization of the centrality of taxation to the overall economic reform of a given country, regions or sub-regional grouping. Indeed taxation rather than natural resources such as oil ought to be the central instrument of state economic policy in modern democracies.
- b. Regional, sub regional and other international economic groupings such as ECOWAS, SADC, UN-ECA; that provide a flat form for economic integration across cultures and political boundaries that are districts' in natural endowments, political circumstances and economic aspirations. Participation within this group will necessitate changes and reforms in laws and legislations to suit the new conditions.
- c. Tax treaties and double taxation agreement between countries and nations plays a focal role in shaping tax legislation. With globalization there is an increase in the number of countries that enters into tax treaties and double taxation agreement as part of diplomatic packages, economic integration and or investment attractions; tax havenscountries especially in Asia witnessed monumental economic growth due to duty free and attractive tax rates.
- d. The operation and existence of multinational companies and corporations that engage in economic activities across national, regional and international boundaries enabled countries to review their tax legislations to accommodate their operation. Typically related parties agreement, licensing, leasing and en-franchisement must be considered in effecting changes on tax laws and statutes.
- e. Scientific advancement in terms of innovations and effect of globalization thereon is another important consideration. The improvement in information and communication technology and its impact there with requires that records and other tenets of data management be on-line real time likewise the operation of the financial system, thus change in legislation in this respect is not only desirable but a sin-quo-non.
- f. Database management, development and proper linkage to other stakeholders. The under pinning's of a good tax system is the information base that the tax officer can rely on to work with. The development of customize tax identification number on individual and corporate tax payers as a pre-requisite for public transactions such as Bank account opening, Application for Credit and Master Cards greatly support the process of legislative changes in knowing the quantum of key players and potential tax payers.

TAX LEGISLATION AS A STRATEGY FOR OPTIMAL COMPLIANCE: THE NIGERIAN EXPERIENCE

The new democratically elected government of the federal republic of Nigeria in 1999 recognized the tax system as part of the critical areas of its reform agenda within the context of the government's economic development blueprint; thus set up a study and working group to review and overhaul the entire tax system which has been out of tuned with the current realities. The study group viewed the Nigerian tax system as "unduly complex, skewed, low revenue yielding poorly administered, anti-federalism, largely inequitable and loaded with unduly large number of overlapping taxes which have more nuisance value than revenue value". The group concluded that Nigeria needed a National tax policy hinged principally on the foundation of fostering National development, such a policy would constitute a means of (i) attracting foreign direct investment; (ii) consolidating several policy documents into a single document for ease of reference; (iii) blending various opinions on taxes of different kinds as well as the issues surrounding those opinions; and (iv) providing direction and focus on general tax practices.

The study group in furtherance of their assignment makes the following general recommendation to the Nigerian government:

- a. Tax should be regarded as a citizen's obligation to the Nigerian state for which he expects in return good governance, the provision of securities, clean water and other social amenities.
- b. Tax should be collected by career tax administrators, who are civil servants not adhoc consultants or agents.
- c. Tax effort and focus should be shifted from direct taxation to indirect taxation.
- d. The number of taxes should be small in number, broad-based and yield high revenues.
- e. The machinery of tax administration should be configured to be efficient and cost effective.
- f. The various tiers of government must avoid the hitherto common internal double taxation by the federal, state and local governments.
- g. All the three tiers of government should be free to set up their own administrative machineries for taxes under their jurisdiction, subject to the National Minimum Standards.
- h. In furtherance of the desire to reduce the tax burden on individuals Nigerians, the National Tax Policy should be geared towards a low tax regime.

The working group apart from the recommendation reviewed the various tax laws and legislation and made the following recommendation which to their firm belief will make the tax laws more friendly to the taxpayer and is vulnerable to encourage voluntary compliance:

- a. A reduction in the company income tax rates from 30% to 20% to improve Nigeria's global competitiveness.
- b. A company realizing a loss in the year of assessment should not be liable to pay tax in that year and therefore sect 28A of CITA should be repealed.
- c. Companies whose turnover is less than 50 Million Naira should pay their taxes to the state revenue board either at a rate of 2% of the turnover or 20% of the chargeable profit whichever is higher.
- d. Section 17 of CITA, which empowers tax Authorities to treat the undistributed profit of a Nigerian company controlled by not more than five persons as distributed and taxable should be repealed on the basis that it is impracticable for the tax Authorities to compel such companies to declare dividends against their wish.

- e. Taxes should no longer be withheld at source from the dividends, interests, rents or royalties income of companies that are exempt from company income tax.
- f. The preceding year basis of taxation should be changed to a current year basis of taxation; such reform would realize a significant increase in revenue on current year basis.

SYNOPSIS OF THE PROVISIONS OF AMENDING THE TAX LAW IN NIGERIA: CURRENT LEGISLATION FOR OPTIMAL COMPLIANCE

The entire provisions of the tax laws and statutes were reviewed with the sole intent to amend the provisions thereon which are regarded as a hindrance to compliance effort. A general appraisal of the amendments reveals the following key policy objectives:

1. Streamlining the provision of CITA by the establishment of the Federal Inland Revenue Service (FIRS) under an independent statute (FIRS establishment Act 2007).
2. Ensuring fairness in tax administration.
3. Reviewing penalties.
4. Countering tax avoidance.
5. Reviewing allowance and reliefs.

REPEAL OF PART 1 OF CITA

In order to streamline the administrative machinery of the Nigerian tax system, the Federal Inland Revenue Service which is the operational arm of the federal board of Inland revenue was enacted separately as establishment act; thus section 1 – 7 which form the establishment provision was amended to avoid overlapping; even the composition of the board was fashioned out in such a manner to reflect the democratic nature of the policy. The establishment of Federal Inland Revenue Service under a separate statute of its own makes for easy references by administrator's practitioner and researchers, with this new structure the service has been re-invented in terms of dynamism and professionalism. The body of appeal courses was also replaced with Tax Appeal Tribunals (TAT) with jurisdiction to settle disputes arising from the operation of all the federal taxing statutes (Sections 53 – 57).

ENSURING FAIRNESS IN TAX ADMINISTRATION

The operation of withholding tax system has been causing a serious concern to stakeholder of the tax system. Withholding tax in Nigeria does not only apply to investment incomes, dividend, interest, directors fees, and rents, but also to payments made under contract except on transactions at "arm's length" (open market purchases); where cases of refunds emerges the tax authorities are always reluctant to accord it importance, thus the abolishing of matching concept was conceived as per Section 63(5) of the principal act which provides that "Income tax received under the provisions of this section by deductions from payments made to a company shall be set-off for the purpose of collection against tax charged on such company by an assessment (but only to the extent that the total of such deduction does not exceed the amount of the assessment and provided the assessment is for the period to which such payment relates).

The effect of the above is that taxpayers are allowed to use the withholding tax deducted at source as an off-set for tax liability assessed in respect of incomes generated that suffers

withholding tax at source and any amount in excess cannot be carried forward for future assessments. In response to criticism of this provisions section 19 of the amending act provides that excess payments are to be refunded by the tax authority within 90 days of the assessment with an option for set-off against future taxes. This is indeed an encouragement for compliance by the tax payers.

REVIEW OF PENALTIES

Tax payment universally is considered a compulsory payment for which no direct benefit is received in return. Nobody will be happy to part with his hard earned money on continuous basis; yet anyone who fails to attend to this civic responsibility will be penalized. It is remarkable that various penalties in the principal act (CITA) and other tax laws could unwittingly serve as incentives for non-compliance as they are sometimes ridiculously low; where stringent laws were conceived, they are not really imposed. Typically to stem this tide and for the law to serve its essence section 13(3) of the amended act increase the penalty for failure by companies to file annual returns as and when due from N500 to N25,000 for the first month of default and from N400 to N5000 for every subsequent month. A higher sanction of N100,000 or two years of imprisonment on conviction is provided for in respect of any director, manager, secretary or any agent. The sundry offences penalty has also been increased from N200 to N20,000 on conviction and from N40 to N2000 for each day the failure countries. Similarly, a pre-operational levy of N500 for the first year and N400 for the subsequent years have been increased to N20,000 for the first year N25,000 for subsequent years. Moreover, as per section 13(3) the failure to deduct or remit withholding tax as and when due had been reduced from 200% of the amount not withheld to 10% in a year for the tax not withheld on conviction; this is done with a breathing space and arranges tax payment with relative ease.

COUNTERING TAX AVOIDANCE

Generally the main thrust of tax legislation and amendments is to address the issues of tax evasion and avoidance, by closing unlimited gaps and opportunities that becomes apparent following previous amendments. Section 41(4) of (CITA as amended) provides that an income tax assessment must be made in the currency in which the transaction took place. The amendment provider for the final settlement of contentions issue in petroleum profit tax, transaction there with involved multi-currency usage as the medium for payments and settlements. The petroleum profit tax case of Shell vs. FBIR lasted for two decade unsettled in a court of law, which was later determined by the supreme court of Nigeria. The period for setting withholding tax returns is also reduced from 30 days to 21 days by Section 20(4) of the amended act.

Section 14 which is the legal framework of assessment in respect of insurance business was considered as grossly inadequate to cover all the facets of insurance business; thus section 4 of the act as amended recognizes the insurance and re-insurances provisions and provide allowance for life cover of 1% of gross premium or 10% of the profit thereon whichever is higher.

REVIEW OF ALLOWANCES AND RELIEFS

Tax incentives are usually given in form of reliefs and allowances with a view to cushion the effect of deficiencies in investment environment internationally tax incentives gives a country competitive edge over other countries in an increasingly competitive global economy. The study group in their submission recommended as low tax regime of 20% for company income tax while government on the other hand considers reducing 10% rate lower than the ruling rate to mean reduction in national revenue against increase in expenditure. Similarly the period of carrying over loss to four years unrelieved is considered to be unfair as such a recommendation that companies should be able to set-off all past losses against future profits. But the position of the government was that in the event of loss the following conditions as per Section 25(2) shall apply:

- a. Any company with minimum of 25% of foreign equity in the paid up capital should not be liable to pay minimum tax.
- b. A company that is less than 4 years in operation is exempted from minimum tax.
- c. A company that engage in Agricultural activities or petroleum exploration and or operating in export processing zones is also exempted.

These are intended to encourage foreign direct investment and also serve as an avenue for creating a tax haven. Another relief on companies that operates in the free-trade zones or export processing is to be tax exempt on the condition that 100% of the production of that company is fully for export and that the proceed there on are channeled back into the Nigerian financial system.

EFFECTS OF CHANGES IN TAX LEGISLATION

Tax legislation globally is intended to improve tax system which comprises the tax policy, the tax law and tax administrative machinery. There is a growing demand to highlight major tax statues and conventions due to the dynamism associated with the political economy of individual nations; thus tax legislation provide the driving force for tax reforms and encourage compliance level by all ramifications. The following constitute the effects of changes in legislation:

- a. Improvement in tax administration and tax structure.
- b. Remove ambiguities and update laws to be in line with current day realities and address some of the tax payers and stakeholders concern.
- c. Removing elements of multiple taxation and upheld the principle of equity convenience and fiscal adequacy.
- d. Shifting the entire tax system from direct to indirect by taxing consumption instead of income.
- e. Addressing the tax evasion and avoidance antics with a view to create simplicity in the tax system.
- f. Provide an avenue for voluntary compliance by taxpayers devoid of enforced compliance with is considered out of tune with the current global democratic effort.
- g. It provides an avenue for taxpayer education enlightenment, thus creating a perfect synergy with stakeholders.
- h. It promotes international trade and encourages international, regional and sub-regional economic integration efforts and further strengthened diplomatic ties through tax treaties and double taxation agreement.

CONCLUSION

This write up is intended to provide a working knowledge of current changes in legislation as it affects compliance level in tax administration. Changes do occur as a result of reform efforts or development of synergy in any field of human endeavor, specifically tax administration is considered to be the most dynamic economic ingredients that defines and redefines international ties and regional economic grouping. A good system is always a product of a law that is responsive to changes within the environment. Policy makers are therefore enjoined to periodically review, re-assess and revitalize tax laws and administrative machinery.

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