How the past will shape the future

A review of the major tax events of 2014 and the outlook for 2015.

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In Brief

The year 2014 will go down in history as one year in which tax matters was prominent in national and global discourse across the spectrum. This article outlines some of the major events of the past year and looks into the crystal ball for 2015 covering various aspects from policy and legislation to administration and tax adjudication.

Tax Policy

Nigeria's rebased GDP in 2014 led to a further decline in the tax to GDP ratio from about 12% to 8% compared to the global benchmark of at least 20%. Full implementation of the Transfer Pricing Regulations introduced in August 2012 started in fiscal year 2014. So far the FIRS has left no one in doubt about its readiness to enforce full compliance.

The Nigerian Investment Promotion Commission (NIPC) released a new Regulation which imposed a 2% levy for pioneer incentive application. The National Information Technology Development Agency (NITDA) also released Guidelines on Nigerian content development in the ICT sector and introduced a levy of 2% on certain gadgets and electronic equipment.

Tax representation was conspicuously missing at the National Conference organised in 2014 hence the tax highlight was the taxation of religion organisations and their leaders. Nigeria also hosted the World Economic Forum and had no tax delegation. Commissions on capital market transactions became VAT exempt and luxury tax was introduced towards the end of the year to become effective in 2015. Items covered range from private jets to wines and business/first class air tickets.

There will be a lot of activities in the area of tax policy in 2015. Most of the changes may not be introduced until after the elections. Focus will be on how to bridge the revenue gap through taxation. Presumptive tax for the informal sector will receive more attention both at the federal and state levels. Inflation tax by way of quantitative easing and further devaluation of the Naira are more likely than not. Government's appetite for tax incentives and waivers will wane and the move to stop abuse of existing incentive regime will intensify. There are strong indications that VAT rate may be increased from the current 5% to 10% or even 15%. Hopefully steps will be taken to start serious implementation of the National Tax Policy and questions about tax compliance by politicians will be asked as part of the 2015 elections.

Tax Administration

Three years on there is yet to be a substantive head for the Federal Inland Revenue Service (FIRS) who doubles as the chairman of the Joint Tax Board (JTB). Whilst these agencies continued to function, much more could have been achieved otherwise.

FIRS carried out a nationwide VAT and withholding tax verification and issued a directive on VAT filing requiring taxpayers to start submitting schedules along with their VAT returns showing the VAT attributable to their different branches. FIRS also requested parties to Production Sharing Contracts in the petroleum sector as well as Sole Risk and Marginal Field operators to start filing company income tax returns.

FIRS issued a public notice to clarify the applicable interest rate for late or non-payment of taxes at 15%. In a major shift, the FIRS informed taxpayers and consultants about the new regime for non-resident companies. Such companies are now required to compute their tax based on actual Profits and render financial statements in accordance with IFRS audited by Nigeria based auditors.

Progress was recorded regarding the initiative to implement an Integrated Tax Administration System which will enable taxpayers pay and file their tax returns online. The Enforcement Unit of the FIRS commenced tax raids and sealed off many companies considered as tax defaulters. At states level, there were significant efforts to enforce compliance as seen in Kebbi, Plateau State, Osun, Cross River and of course Lagos State among others.

In 2015, we expect the recent level of enforcement to continue in view of the country's falling revenue from oil. There is likely to be pressure also on tax authorities to reduce their cost of collection. While it is important to improve compliance rate, tax officers must be professional in their approach and follow due process in order not to further complicate the already difficult tax compliance environment. According to the Paying Taxes 2015 report, a joint study of tax regimes in 189 economies by PwC and the World Bank, Nigeria now ranks 179 out of 189 economies surveyed worldwide, a nine point drop from last year's position of 170.

Tax Legislation

A new pension law was enacted during the year. Some of the key changes include increase in the number of employees for mandatory contributions, higher rates of contribution and redefinition of pensionable emolument. Full implementation of the new law is expected in 2015.

There was a move to amend the Oil and Gas Export Free Zone Act and in a move that could result in significant tax revenue loss, the lawmakers sought to pass a Bill to compel private companies to become public entities. The FCT Administration disclosed that it is expecting to earn about N500 billion annually as revenue from the proposed Property Tax Bill when it comes into force.

In 2015, we expect that more significant changes will be made to various tax laws to plug loopholes, generate more tax revenue and hopefully address ambiguities and provisions of the tax laws that discourage investments particularly excess dividend tax, minimum tax and commencement rules. The Petroleum Industry Bill will not receive any serious consideration until after the elections.

Tax Adjudication

There was again a constitutional question raised against the Tax Appeal Tribunal (TAT) on its powers to hear matters relating to tax and federal revenue. A new judgement was issued by the TAT regarding the taxation of transactions with non-residents, specifically withholding tax/corporate income tax and VAT. A decision given by the Court of Appeal (CA) upturned the decision of Federal High Court on the treatment of recharges by non-resident companies filing income tax returns under the deemed profit regime.

The TAT subsequently ruled on the treatment of revenue allocation by a non-resident company under the deemed profit regime. On interest and penalties, the TAT took the position that interest on additional assessment will only start to accrue two months after an undisputed assessment has been served and not when the disputed assessment was raised or when the relevant selfassessment returns were filed. In another judgement, the TAT ruled that interest on intercompany loan incurred by an oil company is tax deductible in so far as the terms meet the arm's length principles. Yet another judgement by the TAT was given in favour of the FIRS regarding the application of "excess dividends" tax.

Lagos State lost the VAT case against the federal government (FG) at the Supreme Court seeking to challenge the powers of the FG to collect VAT on goods and services supplied in the state.

Given the apparent focus on tax collection and hundreds of outstanding cases at various levels of dispute resolution, we expect that the judiciary will have its hands full in 2015.

The Global Stage

Zimbabwe imposed tax on mobile money services, and France introduced a "millionaire tax" while Portugal took measures to enforce collection of food security tax from operators of large supermarket chains and the country's parliament approved a reform on environmental taxes.

In Spain, government announced plans to lower social security contributions for employers who recruit permanent members of staff but introduced a controversial Google tax on news aggregators. Ukraine considered the introduction of a tax amnesty and a war tax to fund the war with Russia. Japan implemented a higher consumption tax rate from 5% to 8% which was partly blamed for the economic recession.
The Egyptian government introduced a 10% tax on annual stock market capital gains, cash dividends, and bonus shares. The Chinese government announced a package of supportive tax measures for domestic film-makers and distributors and confirmed electric car purchase tax exemption.

Implementation of the United States' FATCA law commenced in 2014 and in the ongoing effort to tackle transfer mispricing, the OECD published reports to address base erosion and profit shifting including revisions to its transfer pricing guidelines and how to address the tax challenges of the digital economy.

In 2015, the current initiatives of the OECD will continue. The US and other capital exporting countries will seek to address the issue of tax inversion while more countries will embrace cooperative compliance regime. Tax havens will come under increased scrutiny and many tax authorities will embrace social media to raise tax awareness. Ongoing efforts to better integrate the ECOWAS region will gain momentum in 2015.

2015 Tax Resolutions

The falling oil prices and the depletion of Nigeria's foreign reserve will force government to take measures that will change the tax landscape. Taxpayers must resolve to comply fully with their tax obligations, pay the right amount of tax and on time. Government must resolve to simplify the tax system, put tax money to work and be more transparent and accountable to the people. Public officers must be tax compliant and lead by example.

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