TAX WATCH

2014 in perspective

A projection into the world of tax and fiscal policy expectations for the year

By Taiwo Oyedele

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He who asks fortune-tellers the future unwittingly forfeits an inner intimation of coming events that is a thousand times more exact than anything they may say. He is impelled by inertia, rather than curiosity, and nothing is more unlike the submissive apathy with which he hears his fate revealed than the alert dexterity with which the man of courage lays hands on the future. These are the words of Walter Benjamin, a German philosopher who died in 1940, and these words are still true today.

There is no doubt that life is full of uncertainties and so is tax. However, going by the various events that shaped the world of tax in 2013, one can reasonably predict a trend. This is what I have done in this article. So follow me on a journey of tax adventure into 2014 as we explore the various possibilities in different tax areas from policy and legislation to administration, tax adjudication and advocacy.

Tax Policy

The 2014 Budget of the Federal Government of Nigeria was laid before the National Assembly by the Finance Minister in December 2013 without any budget speech which should normally contain an overview of the budget, the macro-economic strategy and fiscal policy direction for the year. In other climes, budget speeches are keenly anticipated and people hold their breath in anticipation of what government has to say given the significant impact of government's action or inaction on businesses, economic growth, employment and taxation among others.

The fact that no fiscal policy was communicated is in itself a "policy of tax uncertainty". I expect that the President and/or the minister for finance will subsequently issue fiscal policy statements sooner rather than later.

Given the likelihood of excess crude oil supply globally in 2014, as a result of key factors such as the recent G5+1 deal with Iran, shale oil development, various crude oil discoveries across Africa and so on; one would expect the price of crude oil to fall. This will put further pressure on the dwindling government revenue in the face of rising expenditure profile particularly on education following the 6-month strike by ASUU, security and defence and election spending.

The revenue gap will be funded partly by borrowing, and also by tax. It will be unpopular in a pre-election year to introduce new taxes except it affects a selected few like luxury tax on private jets. Therefore government will seek to expand the tax net to get more from the existing taxes. Presumptive tax for the informal sector is a potential consideration. Also inflation tax by way of quantitative easing and devaluation of the Naira against major currencies are probable. I expect government to have less appetite for tax incentives and waivers and make a move to stop the abuse of existing incentive regime. The planned rebasing of Nigeria's GDP will make the current abysmal ratio of tax revenue to GDP of less than 7% even worse. Tax authorities will therefore be put under immense pressure to collect more taxes.

The anti-graft agencies will beam their searchlight on tax frauds. Whether this will be done out of genuine desire to curb tax corruption or as a political witch hunting will be up for debate. Hopefully we will see non tax compliant politicians disqualified from contesting in 2015.

Tax Administration

The new Transfer Pricing (TP) regulations which came into force in August 2012 is applicable to all companies with related parties for their financial year 2013. This means the first set of tax returns containing TP disclosure and declarations will be submitted in 2014. This is expected to change the tax landscape but many will struggle to comply effectively with this complex area of taxation.

The pressure for more tax revenue will push the tax authorities to look for more taxes by expanding their tax base but also from existing taxpayers through enforcement of penalty and interest for late payments. The finance minister recently said that 75% of companies are not registered for taxes while 65% of those registered are evading taxes. This means out of 25% who are registered for taxes only 35% are compliant which is less than 9% of the taxpayers' population. The story is similar or even worse at the states and local governments' level.

There will be a new focus on taxation of employment benefits such as interest free loans to employees, free products, share options, scrapped assets and so on as a result of the adoption of International Financial Reporting Standards (IFRS) which require companies to disclose these benefits in the financial statements. Many state tax authorities will also become aggressive with deemed income tax for expatriates who fail to declare their actual income.

The planned introduction of electronic taxation system by the FIRS and JTB should reach an advanced stage with possible pilot implementation. I hope we will have a substantive head of the FIRS this year who also doubles as the Chairman of the JTB. If this happens, taxpayers should expect some administrative changes initially and then some stability subsequently.

Tax Legislation

The Petroleum Industry Bill (PIB) will unfortunately continue to be in limbo given the lack of political will to push it through. Our legislators continue to either ignore or refuse to properly address the PIB from the perspective of national (rather than sectarian) interest. This has blocked the potential huge new investments in the sector and created significant uncertainties for existing investors. Other tax bills including the Pension Reform Bill 2013 are likely to remain outstanding.

At the states level, there will be a drive for autonomy for more tax authorities in view of the apparent benefits to those who currently enjoy this status such as the FIRS, Lagos IRS, Rivers IRS, and Edo IRS.

Tax Justice

Justice delayed people say is justice denied. The slow pace of tax justice due to insufficient knowledge and inadequate attention being given to tax matters by the judiciary will continue. Also the trend we have seen whereby the court focuses extensively on the letters rather than the spirit of the law is not likely to change. A friend once said to me that what we have in Nigeria are courts of law rather than courts of justice because issues are often dealt with based on technicalities rather than their merits or substance.

I hope that the controversy surrounding the jurisdiction of the Tax Appeal Tribunal to hear tax cases bothering on federal taxes will be laid to rest in 2014.

Tax Advocacy

The level of ignorance regarding tax matters in Nigeria is alarming and this cuts across the spectrum from taxpayers to tax administrators, policy makers, legislators and tax professionals. To make any meaningful headway, we need to raise our level of tax awareness through public enlightenment campaign and taxpayer education.

In 2013, the Nigeria Leadership Initiative in conjunction with PwC published White Papers on Taxation highlighting the critical issues in the Nigerian tax system covering policy, legislation and tax administration. The Papers demonstrate the urgent need for action and proffer practical solutions for tax reforms. Public presentations of the White Papers were made in Abuja, Lagos and at the House of Commons in London.

Also, the Manufacturers Association of Nigeria championed an initiative to address multiple taxation. More stakeholders need to join these efforts including professional bodies, NGOs and the organized private sector, and together we must demand accountability and transparency.

The Global Stage

The high profile tax cases of 2013 such as the conviction of the former Italian Prime Minister, Silvio Berlusconi, and many superstars over tax fraud will continue. Multinationals will come under increased scrutiny and accusation of aggressive tax avoidance due to transfer mispricing. The G20 and many other countries will continue to look for ways to block the loopholes in the tax system including encouraging more countries to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The current initiatives of the OECD on base erosion and profit shifting (BEPS) and various consultations on transfer pricing will intensify. The proposal for Country by Country tax reporting will gain momentum but not likely to be implemented in 2014.

Many tax authorities will turn to social media (Facebook, Twitter, You-Tube and so on) to connect with taxpayers in order to raise tax awareness, expand the tax base and encourage voluntary compliance.

The Foreign Account Tax Compliance Act (FATCA) introduced by the US to bring all their citizens and permanent residents to the US tax net will gain momentum as many countries (including Nigeria) will be left with no option but to implement the rules. A number of developed countries will follow suit to introduce their own versions of FATCA.

With the legalisation of drug consumption in a few countries, Marijuana tax will be introduced. Given the increasing popularity of gay rights, one should not be surprised if there are calls for tax breaks for gay couples but clearly not in Nigeria.

2014 Tax Resolution

If the events of 2013 are anything to go by, then every discerning taxpayer must brace up and become fully aware of their tax obligations. Taxpayers must be prepared to pay the right amount of tax and on time, as to do otherwise will be tantamount to ignoring fire on the roof and then hope to have a good night sleep.

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