

Does Nigeria Need a Tax Crimes Commission?

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Background

The Nigerian National Assembly is currently deliberating on the National Inspector General for Tax Crimes Commission, 2022 Bill (SB. 951 "the Bill").

As at 24 March 2022, the Bill had passed second reading and has been referred to the Committee on Finance for review and recommendations.

Highlights of the Bill

- The bill seeks to establish the Inspector-General for Tax Crimes Commission ("the Commission") to - (i) address revenue leakages emanating from non-payment and under payment of taxes; (ii) irregularities in the assessment, reporting and remittances of taxes; (iii) to prevent and "combat" tax-related crimes; (iv) to plug all leakages in the tax administration system; and (v) to ensure the protection of taxpayers' rights.
- The bill consists of seven parts and a schedule. The functions of the Commission are provided in section 6 as follows - (a) complement the Federal Inland Revenue Service (FIRS) in ensuring compliance with payment of taxes; (b) develop and implement national policy for tracking down tax defaulters; (c) develop tax compliance strategies; (d) provide for an efficient and effective mechanism in administering the Nigerian tax system; (e) protect taxpayers rights; (f) educate the citizenry on tax matters; (g) collaborate with relevant stakeholders to ensure payment of taxes and proper remittance to the Federation Account; (h) provide a transparent platform on all matters relating to tax; (i) provide sustainable finance and revenue for the government.
- Per sections 16 and 23 of the Bill, the Commission will be funded by budgetary allocations from the Federal Government, as well as grants and donations from local and international organisations. Donations made to the Commission will be treated as an allowable expense for tax purposes.
- Section 31 of the Bill grants the Commission powers to access records and request for information suggesting that the Commission has powers to carry out tax audits and investigation.

Issues arising from the Bill

The Bill seeks to create a Commission to complement the activities of the FIRS - It is unclear what gaps have been identified in prosecuting tax crimes, and how the proposed commission will address such. A more efficient solution could be to fully enforce existing provisions of the FIRS Establishment Act and those of existing financial crimes agencies such as the EFCC and ICPC. Any identified gaps may then require strengthening of the existing institutions rather than creating a new commission which will inevitably lead to overlapping functions, friction and conflicts.

- **Tax crimes are not defined in the Bill.** The Bill does not define what will qualify as a tax crime. Does it comprise the actions that are punishable by imprisonment only or those that comprise a fine as established in the existing tax laws? Are there new scenarios that can constitute tax crimes? Tax laws already contain offences and penalties which range from fines to imprisonment. Based on section 25 and Section 1 of the Federal Inland Revenue Service (Establishment) Act (FIRSEA), the FIRS is empowered to administer tax laws and has the power to sue, as well as work with the Attorney General, all government security, and law enforcement agencies in the enforcement and eradication of tax related offences. The FIRS has sufficient statutory powers required for efficient administration of tax laws. Perhaps what requires improvement is the availability of intelligence, the administrative focus and political will to prosecute tax crimes. The creation of a new Commission will not solve these problems.
- **FIRS has been clarified in the Finance Act 2021 as the primary agency for tax administration.** Section 68 of the FIRSEA (as amended by the Finance Act, 2021) provides that the FIRS is the primary agency for tax administration. This was meant to reduce the administrative burden on taxpayers who have to deal with multiple agencies on tax matters such as RMAFC, EFCC, NIPOST, etc. The new Bill therefore runs contrary to the objectives of this recent clarification via the Finance Act. It is unclear how the Commission will "complement" the FIRS in ensuring payment of taxes and administering the tax system without creating additional burden for taxpayers. This is important because the Commission has been proposed to have independent rights of access to records of any person or authority affected by the Bill.
- **The Commission seeks to protect taxpayer's rights.** While this is a desirable objective, the Bill did not contain provisions to confer and/or protect taxpayers' rights. It is also unclear whether this function will be enforced solely by the proposed Commission or through the Tax Appeal Tribunal and the statutory courts.
- **Is the Commission a scrutiniser for checks and balances in tax administration of some sorts?** Unlike the FIRSEA, the Bill is careful not to create a reporting line directly to the Minister of Finance. As such, directives on functions of the Commission are prescribed to be only from the President. The Inspector General is given powers to make regulations without recourse to the Minister of Finance. Annual Reports are only required to be submitted to the Minister of Finance who is required to forward the report to the National Assembly. A copy is not presented to the Federal Executive Council. These provisions create questions around protocols and the reporting lines for this Commission.

Takeaway

The Bill in its current form raises more questions than answers. The explanatory memorandum of the Bill suggests that the purpose of the Bill is “to promote economic efficiency and effectiveness ...”. However, the proposed establishment of the Commission seems to negate this objective. Creating multiple agencies competing with one another to achieve the same purpose will surely create inefficiencies.

The bill contradicts the discussions at the recently concluded National Tax Dialogue, which centred around the harmonisation of (already) fragmented tax systems into a coherent whole for improved tax revenue collection.

This is a classical case of more is not always better. Nigeria needs to harmonise existing revenue agencies, tax intelligence, administration and enforcement mechanisms. Amendments could be made to the relevant laws where gaps are identified.

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