

The key issues and challenges of implementing the National Tax Policy (Part 1)

Having a roadmap is good, but it is only a start – walking the road is what makes a difference



... whether it is called a tax, duty, levy, fee, toll, rate or charge - to the extent that it is compulsorily imposed by government and usually without a direct benefit to the payer – then it is a tax.

According to the former United States President, Franklin D. Roosevelt, “Taxes, after all, are the dues that we pay for the privileges of membership in an organised society.” In Nigeria, like many other countries around the globe, taxes play a critical role in ensuring the existence of the Nation and the wellbeing of her people.

Given the significance of taxation, it is important for governments at all levels to pay attention to what is collected, how it is collected, who collects what, who controls what is collected, how what is collected is spent and who is ultimately

responsible and accountable to the taxpayers for the revenue collected and its utilisation.

The National Tax Policy (NTP) was approved in January 2010 and seeks to provide a set of guidelines, rules and modus operandi that would regulate Nigeria’s tax system and provide a basis for tax legislation and tax administration. Over 3 years after, the NTP is yet to be markedly implemented neither is there a structure in place to ensure its full implementation.

According to the NTP, the existing tax system has

some inherent problems such as:

- the increased demand to grow internally generated revenue, which has led to the exercise of the powers of taxation to the detriment of the taxpayers who suffer multiple taxation and bear a higher tax burden than anticipated;
- insufficient information available to taxpayers on tax compliance requirements, which creates uncertainty and room for leakages in the tax system;
- lack of accountability for tax revenue and its expenditure;
- lack of clarity on taxation powers of each level of government and encroachment on the powers of one level or state by another;
- lack of skilled manpower and inadequate funding, leading to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance;
- the non refund of excess taxes to taxpayers, due to the lack of an efficient system and funds;
- the non-review of tax legislation, which had led to obsolete laws, that do not reflect Nigeria's current realities; and
- the lack of a specific policy direction for tax matters in Nigeria and the absence of laid down procedures for the operation of the various tax authorities.

Having identified the inherent problems with the tax system, it is necessary to clarify what a tax is for the avoidance of doubt. According to the Black Law Dictionary (BLD), *"Tax is a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue."* Another definition by BLD which has been quoted and endorsed, or approved, expressly or otherwise, by many different courts is *"Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs."*

So whether it is called a tax, duty, levy, fee, toll, rates or charges, to the extent that it is compulsorily imposed by government and usually without a direct benefit to the payer – then it is a tax.

Although the main purpose of raising taxes is to generate revenue for the government, other purposes include addressing inequalities in income distribution to bridge the gap between the haves and have-nots; representation which implies that taxes are imposed to assure citizens of representation in the governance of the society and for them to demand accountability in return. The objectives of the tax system also include facilitation of economic growth

and development, providing the government with stable resources for the provision of public goods and services, economic stabilization, fairness and equity, and to correct market failures or imperfections.

Many areas of the Nigerian tax system require urgent attention, one of which is multiplicity of taxes often blamed on the country's system of government. However, it is instructive to note that the 1999 Constitution of the Federal Republic of Nigeria places the responsibility for legislating on taxation on income, capital gains and stamp duty on the federal government. It also places collection of taxes on the concurrent legislative list, enabling both the federal government and states to administer or collect taxes as it pertains to capital gains, incomes or profits of persons other than companies; and stamp duties on documents or transactions. At the same time, the Constitution places the responsibility for legislating on the collection of taxes, fees and charges that can be collected by the local governments on the state governments. Other than taxes specifically stated in the exclusive legislative list, activities that would ordinarily attract taxes, fees and levies are placed as part of the responsibilities of the local government council. To control the incidence of multiple taxation, the Constitution gives the responsibility to the Federal Government in the case of State Governments, and to the State Government in the case of Local Governments.

Another major contributory factor is earmark taxes whereby separate taxes are introduced from time to time for various reasons. Examples of this include Education Tax, Information Technology Tax, Local Content levy, Industrial Training Fund levy and so on. Despite the enormous amount of funds generated by these earmark taxes at significant cost to businesses, it is unfortunate that very little or no positive impact has been made on the people and the economy.

This article was contributed by Taiwo Oyedele, Partner and Head of Tax, PwC Nigeria, to the Nigeria Leadership Initiative (NLI) White Papers Volume 2. The White Papers were published by the NLI in partnership with PwC to highlight some of the critical issues in the Nigerian tax system covering policy, legislation and tax administration. The Papers also demonstrate the urgent need for action and proffer practical solutions for tax reforms.

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