2013 Tax Environment in Retrospect
A review of key events in the past year

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The year 2013 has now taken its rightful place in the archive of history. In the area of taxation, 2013 was a year of mixed events from tax policy and legislation to tax administration, advocacy and tax adjudication both locally and internationally, some of which were positive and some not so good depending on who you are and where you stand. No matter your perspective, it is no doubt a year to remember. This article outlines some of the major events in case you have missed out on any of them.

Tax Policy

As part of the 2013 Budget Speech, the federal government announced a new import duty regime with higher import duty rates for sugar and rice, and lower rates for aircrafts and mining equipment. The higher rate for sugar and rice led to higher prices for these commodities.

The government introduced the use of Tax Identification Number (TIN) for clearance of goods at the ports and for selected banking transactions. Also, government announced a policy to stop stamp duty and Value Added Tax (VAT) on transactions in the capital market.

There was an attempt during the year by the Nigerian Airspace Management Agency to introduce a luxury tax for the use of private jets. This was however aborted by the Senate on the basis that due process was not followed. The 2011 amendment to the Personal income Tax Act imposed tax on the president, governors, and their deputies but none of these political office holders seemed to have complied. One will probably be right to conclude that tax laws in Nigeria are made by the "rich" for the "poor" to pay which is contrary to the letters and spirit of the National

Perhaps the biggest failure of 2013 as far as tax policy is concerned is that no aspect of the National Tax Policy was implemented during the year.

Tax Administration

It beats me why and how it has taken two years and we still haven't found 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. This is critical given the overall ranking of Nigeria at 170 out of 189 economies on the ease of paying taxes survey by PwC and the World Bank.

During the year, the FIRS issued a number of Information Circulars including the Tax Implications of IFRS Adoption and Bank Holding Company Structure. The Service also issued a regulation on self-assessment returns limiting tax instalments from six to a maximum of three.

In order to facilitate the negotiation of tax treaties, the FIRS prepared a working model on double taxation avoidance for Nigeria. This is being used in some ongoing treaty negotiations with countries such as Kenya.

In an effort to improve tax compliance, the FIRS partnered Nollywood to explore the vehicle of drama in its quest to achieve the utmost objective of bringing as many Nigerians as possible into the tax net. There was also an expression of intention to implement presumptive tax regime for the informal sector. In the area of tax simplification, there was an initiative to implement an Integrated Tax Administration System (ITAS) which will enable taxpayers pay and file their tax returns online.

At the states level, Lagos State sought the help of embassies to request for tax clearance certificate by visa applicants. Edo State IRS had a battle with FAAN's Benin office over non remittance of PAYE. Similar scenes played out between Plateau State IRS and Unijos, Osun IRS and the Obafemi Awolowo University Teaching Hospital, Ekiti State IRS and the state chapter of Non Academic Staff Union of Universities, Anambra State IRS and traders in Eke Awka market of the state and so on. The Edo State Government fixed daily levies and rates to be paid by commercial transport operators with commercial inter-state motor vehicle drivers paying N150 per day and commercial motorcycle riders paying N50 per day.

Tax Legislation

Major changes to the existing pension scheme were proposed via a Bill, the Pension Reform Bill 2013. Some of the fundamental changes proposed in the Bill include:

- Applicability to employers with 3 or more staff (currently 5 or more);
- Total rate of contribution to be 20% (currently 15%) of monthly emolument with a minimum of 12% (currently 7.5%) by the employer and a minimum of 8% by the employee (currently 7.5%).

The elephant in the room which the legislators continue to either ignore or refuse to properly address is the Petroleum Industry Bill. This has blocked the potential huge new investments in the sector and created significant uncertainties for existing investors.

The National Assembly attempted to audit banks' tax compliance during the year following the low tax payments compared to the huge profits declared by many banks. It is necessary for every individual and corporate person to pay their fair share of tax but going to the extent of auditing companies to ensure that taxes have been paid should not be the responsibility of lawmakers.

At the states level, laws were enacted to grant autonomy to some tax authorities including Rivers and Edo states.

Tax Justice

The tenure of the Tax Appeal Tribunal (TAT) Commissioners expired in February 2013 and I was delighted to see that they were promptly reconstituted. However later in the year, there was a controversy regarding the jurisdiction of the TAT to hear federal tax matters. The Federal High Court (Abuja Division) in TSKJ v. FIRS declared the TAT unconstitutional and ordered its disbandment. However, the same Court (Lagos Division) a few weeks later delivered a judgment upholding the constitutionality of the TAT in the case brought before it by the NNPC against Esso Exploration and Shell.

Also during the year, the Supreme Court ruled in favour of Lagos State regarding the regulation of the hospitality industry thereby upholding the Hospitality Industry law of the state. The judgment however did not address the issue of whether Lagos State has the constitutional right to impose consumption tax on hotels, restaurants and event centres as this was not a prayer before the court in this case contrary to what Lagos State would like people to believe.

Tax advocacy

The Manufacturers Association of Nigeria (MAN) took steps to address multiple taxation by approaching the National Economic Council (NEC) with specific multiple taxes being faced by businesses across the country. MAN's tax proposals were adopted by NEC including call for a review and amendment of Taxes and Levies (Approved list for Collection) Act 21 T2 LFN 2004; outlaw of the use of unorthodox means to collect taxes and levies; automation of tax operations by relevant tax authorities to eliminate leakages and ensure ease of collection; and treatment of education tax as a "levy" to become tax deductible.

Also during the year, the Nigeria Leadership Initiative in conjunction with PwC Nigeria 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.

The Global Stage

The year saw Lionel Messi accused of tax evasion while Dolce and Galbana was convicted and fined over US$ 440 m for tax evasion. The Italian Senate expelled former Prime Minister Silvio Berlusconi over tax fraud conviction, while big multinationals including Google, Apple, Starbucks, Amazon and Facebook were accused of transfer mispricing. This led to the G20 backing a plan to stop global tax avoidance and evasion and the signing of Multilateral Convention on Mutual Administrative Assistance in Tax Matters by over 60 countries including Nigeria.

The UK tax authority (HMRC) took its tax campaign to YouTube and Twitter to engage and guide individuals and small businesses. The suite of videos covers practical subjects such as PAYE, VAT, Corporation Tax and other tax compliance information. They also held a week long twitter question and answer session to advise SME's on tax matters.

The US introduced tax on internet shopping and the Foreign Account Tax Compliance Act (FATCA) to bring all US citizens and permanent residents to the US tax net regardless of where they are in the world. Many US citizens gave up their citizenship to avoid the tax obligations. Financial transaction tax was introduced in Europe. One of the most unbelievable events was the failed Cyprus bailout tax on bank depositors which would have seen bank customers in Cyprus pay a one-off levy on their deposits. Depositors with less than 100,000 euros were to pay 6.75%, those with more than 100,000 in their accounts were to pay 9.9%. All depositors were to be compensated with equivalent amount of shares in their banks.

Samoa Air, a small airline based on the South Pacific Island proposed to start calculating their air fare based on passengers' weight. Call it Pay-As-You-Weigh and you will be on point. France succeeded in introducing a "millionaire tax" of 75% on annual earning of Euro 1 million and above.

2014 Tax Resolution

Given the various tax events of 2013, every discerning taxpayer must be aware of their tax obligations, pay the right amount of tax and on time. They must also know their rights and hold government accountable.

Watch out for my tax predictions for 2014.

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