

# Tax reflections and predictions

## A review of the tax environment in 2018 and expectations for 2019



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An audit report by the Auditor-General for the Federation submitted to the National Assembly on 31 May 2018 contained information to the effect that the Presidency; both chambers of the National Assembly; the Economic and Financial Crimes Commission (EFCC); and over 100 other ministries, departments and agencies (MDAs) defaulted in remitting various taxes including VAT and withholding taxes deducted from their contractors and PAYE of their staff.

In case you missed any tax events in the past year, I will attempt to summarise the major ones in this article and share my thoughts regarding expectations for the New Year.

### **Tax policy**

The Federal Ministry of Finance issued an addendum to the 2017 Revised Import Guidelines, Procedures and Documentation Requirements under the Destination Inspection Scheme to clarify certain provisions of the Guidelines and improve ease of cross-border trade.

President Muhammadu Buhari signed an Executive Order titled Planning and Execution of Projects, Promotion of Nigerian Content in Contracts and Science, Engineering and Technology. The Order directs Ministries, Departments and Agencies (MDAs) to promote local content by giving preference to Nigerian companies (defined as companies formed and registered in Nigeria with no less than 51% equity shares owned by Nigerians) in the award of contracts, bids and projects.

The National Tax Policy Implementation Committee drafted 5 Tax Amendment Bills and 2 Executive Orders. These were approved by the Federal Executive Council but the Orders are yet to be gazetted while the Bills are yet to be presented to the National Assembly.

The Presidential Enabling Business Environment Council (PEBEC) continues in its efforts at improving the business environment including ease of paying taxes. Nigeria moved up 14 places from 171 to 157 out of 190 economies in the latest World Bank Ease of Doing Business Ranking.

The federal government extended the deadline for the Voluntary Assets and Income Declaration Scheme (VAIDS) by 3 months to 30 June 2018. In October, a new Order on Voluntary Offshore Assets Regularisation Scheme (VOARS) was introduced. According to the order, eligible persons who hold offshore assets and income are expected to declare voluntarily within 12 months and pay either a one-time levy of 35 percent or the applicable taxes plus penalties and interest.

Nigeria's Ministry of Interior launched an e-citibiz portal for online processing of permits including business permits, expatriate quotas, citizenship applications and licenses to officiate marriages. Visitors arriving Nigeria on the Visa on Arrival (VoA) programme were no longer required to make cash payments but rather pay their VoA fees

using electronic cards at the ports of entry or online via the Nigeria Immigration Service website.

Changes to the pioneer status incentive scheme were gazetted by the Nigerian Investment Promotion Commission (NIPC) including the new list of 27 additional pioneer industries and products. The 2019 Federal Government of Nigeria Budget was presented in December 2018. The overall policy thrust of the 2019 Budget is to ensure economic diversification, inclusive growth and sustainable development. The Budget did not contain tax policy changes.

### ***Tax Administration***

The Federal Inland Revenue Service (FIRS) released the Income Tax (Country-by-Country Reporting) Regulations, 2018 and detailed Guidelines. This follows Nigeria's signing of the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of Country-by-Country Reports (CbCRs) in January 2016 and subsequent ratification in August 2016. Groups headquartered in Nigeria are required to prepare and file a CbCR with the FIRS annually.

The FIRS also issued the Income Tax (Transfer Pricing) Regulations, 2018 to replace the 2012 TP Regulations. The new Regulations incorporate the 2017 updates to the OECD's TP Guidelines and some provisions contained in the African Tax Administration Forum's (ATAF) Suggested Approach to drafting TP legislation. The Regulations also introduce administrative penalties for a wide range of offences.

In order to enforce tax compliance, the FIRS started writing to banks appointing them as collection agents of taxpayers considered to be delinquent in their tax payments. The FIRS directed the relevant banks to freeze the accounts until all outstanding taxes have been paid or a payment plan agreed.

The Lagos State Internal Revenue Service (LIRS) issued the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulations 2017 in order to leverage technology in administering the Law. An audit report by the Auditor-General for the Federation submitted to the National Assembly on 31 May 2018 contained information to the effect that the Presidency; both chambers of the National Assembly; the Economic and Financial Crimes Commission (EFCC); and over 100 other ministries, departments and agencies (MDAs) defaulted in remitting various taxes including VAT and withholding taxes deducted from their contractors and PAYE of their staff.

### ***Tax Laws and Regulation***

The House of Representatives passed the Petroleum Industry Governance Bill (PIGB), the first of the component parts of the old Petroleum Industry Bill (PIB) which has undergone series of re-drafting and extensive legislative considerations since 2008 without successful enactment into law. The Senate had earlier passed the PIGB on 25 May 2017. Unfortunately the next steps to harmonise the Bill and present to the President for assent were unsuccessful.

Various double taxation treaties were negotiated, concluded or ratified including the Nigeria-Spain avoidance of double taxation agreement (DTA) which was initially negotiated in June 2009 and presented to the National Assembly for ratification in 2016, alongside DTAs with Sweden and South Korea. Also approved were DTAs between Nigeria and Singapore, Ghana and Cameroon.

The Senate rejected the report of its committee on the National Roads Fund (Establishment, etc) Bill 2017 aimed at finding a sustainable means to finance the maintenance and rehabilitation of national roads through imposition of fuel tax and toll levies. The National Assembly passed the Federal Competition and Consumer Protection Bill aimed at promoting a competitive market and protecting consumer rights. The Bill applies to all businesses and all commercial activities within, or having effect within Nigeria and extends to undertakings in which the Federal, State or Local Government or any of their agencies have a controlling stake. The Bill prescribes very stringent fines for non-compliance.

The federal government approved an increase to the excise duties on tobacco and alcoholic beverages effective from 4 June 2018. The increase would be introduced in phases over a 3-year period from 2018 to 2020 to moderate the impact of the increment on consumers.

In a disappointing move, the NASS passed the Electoral Amendment Bill which includes a provision seeking to remove the requirement for political parties to demand tax clearance certificates from candidates vying for political offices.

On 28 January 2018, the Lagos State House of Assembly passed the Land Use Charge Law 2018 to repeal and replace the Land Use Charge Law 2001. Following a public outcry, the government announced significant discounts to the land use charge rates and initiated a process to review the new law.

## ***Tax Justice and Dispute Resolution***

The Federal High Court (FHC) issued an Order restraining the Lagos State Government from enforcing both the Hotel Occupancy and Restaurant Consumption Law (Law) and the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulation. This resulted from a suit by the Registered Trustees of Hotel Owners and Managers Association of Nigeria v. Attorney General of Lagos State and Federal Inland Revenue Service. The Order was subsequently varied to allow the State to continue to enforce the Consumption Law but without the electronic fiscal devices. The Tax Appeal Tribunal (TAT) was reconstituted during the year. Its mandate is to hear and resolve tax disputes arising from all federal tax legislation. There were 209 pending cases as at the time of inauguration in November 2018.

In a dramatic turn of events, the FHC overruled the TAT in *Gazprom Oil & Gas Nig. Ltd vs. FIRS* regarding the applicability of VAT on imported services. At the TAT, Gazprom had won on the basis that it only received consultancy and advisory services from foreign companies that did not carry on business in Nigeria as the services were wholly performed abroad.

## ***The Global Stage***

The UK introduced the Unexplained Wealth Order (UWO) incorporated into UK law in January 2018 as part of the Criminal Finances Act 2017. UWO is applicable to assets worth 50,000 Pounds or more where it appears that the owner does not have legitimate source of income to support such wealth. Any unexplained wealth may be forfeited to the government. The OECD announced the entry into force of its Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting effective from 1 July 2018. This follows from the deposit of

the fifth instrument of ratification by Slovenia on 22 March 2018.

In May 2018, the OECD released its first annual peer reviews for 95 countries who expressed their commitment to automatically exchange taxpayers information through the exchange of Country-by-Country (CbC) reports. Nigeria was one of the countries reviewed in the report. The new VAT regime with a standard rate of 5% introduced in the UAE and Saudi Arabia became effective from 1 January 2018. On the African continent, Mauritius introduced significant tax reforms to its Global Business sector rules. Effective from 1 January 2019, the Deemed Foreign Tax Credit regime will be abolished and GBL companies will be taxed at the rate of 15%.

## ***What to expect in 2019***

Being an election year in Nigeria, it is reasonable to expect very little or no progress in terms of tax policy implementation and overall fiscal reform. The chances of the PIB being enacted into law is also very slim. The Voluntary Offshore Assets Regularisation Scheme will record a marginal success and tax authorities at all levels will continue with their aggressive measures to enforce tax compliance. One should expect a lot of activities in the tax dispute resolution space as a result of the aggressive approach by the authorities.

Globally, the impact of the tariff trade war initiated by the Trump administration will be felt worldwide as major economies suffer slower economic growth while the race to average corporate income tax rates will intensify following the recent tax reforms in the US. Efforts by the OECD to fight tax avoidance will continue but taxation of the digital economy will still be a hard knot to crack without any major global consensus and more countries taking unilateral measures.

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