

Nigerian tax predictions for 2019



By Kenneth Erikume

Based on the trends and predictions, it is virtually impossible that a company will be able to manage its tax affairs without any dispute with the tax authorities. Directors of companies should therefore revisit their tax strategy and redesign their approach to managing taxes to be more transparent and compliant.

Introduction

Last year, I made 8 predictions about the tax ecosystem in 2018. Like the great Nostradamus, most of my ‘prophecies’ came to pass.

A summary of the predictions and the outcomes are highlighted below:

1. Tax to GDP ratio remained abysmally low – Official numbers are not out, but my rough estimate is that it would be in the region of 6.5%. The increase is largely due to the FIRS record collection of N5.3 trillion in 2018.
2. Innovation from tax authorities and application of latent laws – A notable one, amongst others, is that the FIRS employed Section 31 of the Federal Inland Revenue Service Establishment Act (FIRSEA) on “power of substitution” to freeze taxpayers accounts
3. More disputes and controversies would lead to pressure for the reconstitution of the Tax Appeal Tribunal (TAT) – The TAT was reconstituted in 2018
4. Tax authorities will roll out technology for tax compliance and enforcement – The FIRS continued its ITAS project, WHT is now issued digitally and started some pilots for automatic VAT reporting and collection. A Regulation for the LIRS to administer electronic fiscal devices at businesses was also released late 2017 and publicized early 2018.
5. Distrain and unconventional audits – We saw the new angle of freezing accounts. We also saw the EFCC being involved in tax audits under the FIRS/EFCC Joint Task Force. The Nigerian Content Development Monitoring Board (NCDMB) also employed an international professional firm to carry out audits of oil companies for the 1% fund.
6. More focus on taxation of property and non-essentials – In 2018, Lagos State sought to introduce a revised land use charge while at the Federal level, excise duty was increased on alcohol and tobacco products

7. Emergence of pseudo-tax authorities and administration – Again the activities of regulators that are not tax authorities in trying to enforce tax increased in 2018. We also had experience of State tax authorities using information from immigration during tax audits on expatriates. Even the Attorney General of the Federation issued out tax demand notices in 2018.
8. Tax whistleblowing – Whistleblowing as a concept never seemed to kick off. Rather than implement tax whistleblowing, the Federal government moved from VAIDS to VOARS. But VOARS is unlikely to have any significant impact in generating additional revenue.

Considering that 2019 is an election year, it may not be as easy to anticipate what will happen like last year. Here are some of my tax prophecies for 2019:

Tax to GDP ratio will continue to be low (and likely to be lower than 2018)

The factors that impacted on tax collection in 2018 remain relevant in 2019. These include the grant of tax incentives, weak revenue administration capacity to deal with evasion and lack of data especially around the informal sector.

A few additional developments that may impact on the prediction of tax to GDP include:

- oil prices are unlikely to be lower than the average for 2018
- the 2017 gazette of the new pioneer list of 99 broad categories which would trigger fresh applications.
- the road fund tax scheme has still not been implemented and if implemented in 2019 would give tax credits for road construction
- the lack of enforcement after the completion of VAIDS. Without any adverse impact on evasive behaviour, tax evasion will be reinforced because “people were able to get away with it”
- it is an election year – The normal trend is that the economy is bound to slow

down during an election year. Most of government’s focus would be on the elections and there may not be significant projects happening in the period leading up to the elections and after. Also, due to political risk and economic uncertainty, investments would slow down.

Tax authority collaboration and joint audits

In 2018, the Joint Tax Board issued a collaborative framework for cooperation between the FIRS and the State Tax Authorities. This indicated that there is now clear movement in improving collaboration after many years of simply discussing the concept.

For taxpayers with branches in different states, dealing with all the State Tax Authorities can be a chore. On the Tax Authority’s side, there is a challenge in getting a holistic picture of the situation of such taxpayers. In addition, tax authorities struggle with enforcement and tracking the place of residence of individuals. I expect to see more progress in 2019 on tax authority collaboration to reduce the administrative burden for taxpayers, improve the robustness of tax audits and improve access to information by tax authorities. In the later part of 2019, we may witness the first joint tax audit if the State Tax Authorities are able to resolve their political differences for the overall good.

The freezing of accounts by FIRS would lead to a major dispute

In 2018, the FIRS embarked on a strategy of freezing accounts of taxpayers to recover additional taxes. At first it seemed like the strategy was to target taxpayers that were not compliant with their tax obligations. However, this was not the case as taxpayers who were largely compliant were also affected. Under Section 31 of the FIRSEA, the tax has to be due and payable before the FIRS can recover the tax from the agent.

If the approach by the tax authorities continues, it may lead to frustration of compliant taxpayers who may either take away their bank accounts from banks who

could not challenge the FIRS position or it could lead to legal action against the FIRS and/or the banks since the taxpayer will not be able to meet their obligations if their accounts are frozen.

Government will contemplate increasing taxes or creating new ones

A new minimum wage is likely to be implemented in 2019 as a fallout from the negotiations between the Government and Organised Labour (in particular, the NLC and ASUU). This would put significant pressure on government to consider the creation of new taxes or to increase tax rates. A lot of states are already struggling to pay salaries under the current wage structure and an increase in minimum wage may result in the government considering an increase in personal income tax rate. At the federal level, the government may explore introduction of taxes on consumption such as luxury tax or excise on other non-essentials products.

The election introduces an interesting spin. Elected officers who are not seeking re-election (as a result of end of political tenure) may be more aggressive in trying to achieve new taxes or increase in rate. However, the issue is likely to remain only a concept as the general public and the Organised Private Sector are expected to fight any such proposals.

Aggression from State Tax Authorities will increase

Another impact from the upward review of wages would be increased aggression from State Tax Authorities. Due to capacity gaps, many State Tax Authorities are unlikely to be successful in expanding the tax net to bring in new taxpayers or uncover undeclared income of existing taxpayers.

This would result in a lot of aggression on the larger corporate taxpayers who declare the taxes of their staff under PAYE which accounts for up to 80% of the revenue of many states until they embrace technology for tax administration and revisit their strategy to tax High Networth Individuals and the informal sector.

New judgments on topical issues like VAT on foreign services and excess dividend tax

The reconstitution of the TAT will lead to more judgments on tax matters that have been pending and escalation of issues from the TAT to the courts if taxpayers or the FIRS are still not satisfied. We are therefore likely to see a new tax issue join the significant rank of VAT on foreign services and excess dividend tax. The excess dividend tax dispute will not be concluded until it gets to the Supreme Court. It is very likely that some of the judgments of the court will come in 2019.

Significant transfer pricing (TP) disputes are expected

Over the years, the FIRS has been building capacity in TP audits. Estimated cases of TP audits over the years has been about 200 cases. It is obvious that the FIRS has been building capacity on TP audits and the first few cases would have provided some learning on where key risks are within companies and specific areas of focus. From their perspective, this will make them more efficient in profiling companies and auditing them. It is therefore expected that TP audits will simply increase over time. In addition, there are a number of disputes that are likely to be raised on the new TP Regulations issued in 2019 such as whether the new penalties can be applied to periods before the effective date of the new Regulations, whether the FIRS can impose new penalties through Regulations that are not contained in the substantive Act, whether the FIRS can impose a restriction on payment of royalties that are neither consistent with the National Office for Technology Acquisition and Promotion Act and the NOTAP guidelines nor consistent with the arm's length principle in CITA.

More adoption of technology by the Tax Authorities

The FIRS ITAS is facing challenges. When the system is offline (which happens frequently during peak filing periods), online filing and payments must then be printed and taken to a tax office. It is expected that the FIRS will address this issue in 2019.

The approach by the tax authorities to use a plug-in to allow automatic extraction of tax data from their accounting systems was challenged in 2018 due to security and privacy concerns. The LIRS has a Regulation, but the project for issuing the electronic fiscal devices is still being resisted by taxpayers in the hospitality and food industry. The FIRS has no law or regulation and therefore received significant pushback. Both the LIRS and FIRS are likely to seek for both collaborative and legal solutions in 2019 to drive adoption.

The LIRS may also improve on their systems to be able to deal with online filing in 2019 for employers for the January PAYE filings and for individuals in March income tax filings. Apart from improving the ease of

paying taxes, they have no option, otherwise, data mining will not be possible for enhancing tax administration.

Conclusion

Based on the trends and predictions, it is virtually impossible that a company will be able to manage its tax affairs without any dispute with the tax authorities. Directors of companies should therefore revisit their tax strategy and redesign their approach to managing taxes to be more transparent and compliant. Taxpayers should also take an inventory of their tax risks and proactively determine how best to manage them.

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