International Bar Association Annual Conference 2022

Recent Developments in International Taxation

Nigeria

Bolanle Hajara Oniyangi

Coordinating Secretary of the Tax Appeal Tribunal, Lagos

bolanle.oniyangi@firs.gov.ng
Introduction

The year 2021 brought some major tax policy changes and innovation in Nigeria, ranging from domestic policy tweaks to a major stance on the most prevalent international tax policy trends, like the Covid-19 pandemic and the ongoing Organisation for Economic Co-operation and Development (OECD)/Group of Twenty (G20) Inclusive Framework’s proposed Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy.

Finance acts

Nigeria enacted laws in response to the Covid-19 pandemic that were aimed at:

- automating tax administration processes;
- focusing on data and analytics for tax administration; and
- generating more revenue for the government by widening the tax nets as opposed to raising tax rates.

Covid-19 responses

Reduction of the minimum tax rate from 0.5 per cent to 0.25 per cent

This policy is aimed at reducing the potential tax burden of relevant companies whose operations may have been hampered by the pandemic and the consequent economic distortions.

Deduction of pandemic donations

Section 25 of the Companies Income Tax Act (CITA) was amended to provide tax relief to companies that made donations to the fight against the Covid-19 pandemic to:

- a public fund;
- a statutory body or institution; or
- an ecclesiastical, charitable, benevolent, or scientific institution or body established in Nigeria and specified in the Fifth Schedule to the act.

It also helped to encourage more companies to donate to the same cause. The donations must be limited to ten per cent of total profit.

Virtual hearing for the Tax Appeal Tribunal

The Tax Appeal Tribunal became empowered to conduct its hearings remotely via virtual means, and new cases filed remotely/electronically.
Compensation for loss of office

Under the Finance Act 2020, compensation received for loss of office/job not exceeding NGN 10m is exempt from capital gains tax (CGT) to insulate low-income earners that may have lost their jobs due to the pandemic from the payment of CGT in compensation for the loss of their jobs.

Automation-focused amendment

TaxProMax

The in-house tax administration infrastructure was deployed to automate both the filing and payment of taxes.

Engagement was also concluded with the Inter-American Centre for Tax Administration (‘CIAT’) with a view to adopting a simplified digital economy compliance tool to facilitate the implementation of the compliance regime for non-resident suppliers of taxable goods and services to Nigeria via digital means.

Automation digitisation made compliance easier for taxpayers who would otherwise have incurred higher compliance risks in terms of the health hazards associated with a physical visit to the offices for the payment of tax in view of the pandemic. This increased revenue yield for the government.

Raising revenue for the government

Simplified compliance regime for non-resident suppliers (VAT)

Section 10 of the VAT Act was amended to empower the appointment of non-resident suppliers of taxable goods and services to Nigeria as collecting agents for the purposes of VAT on the supply of services through digital means to Nigeria. It is expected that this regime will yield tax income on the digital supply of taxable goods and services to Nigeria, especially in respect of business-to-consumer (B2C) supplies.

Non-resident shipping and airline companies

A policy choice was made and backed by an amendment to section 14 of the Companies Income Tax Act to tax the non-freight income of non-resident companies involved in shipping and airlines in Nigeria to 30 per cent pursuant to section 40 of CITA as opposed to the concessionary rate in section 14.

Drive for data

Data is at the heart of the tax administration. Policy choices were made to gather, mine and utilise data. The automation of data gathering is pursuant to section 25 of the Federal Inland Revenue Service Establishment Act (FIRSEA). The filing regime was introduced to companies operating in free-trade zones (FTZ) with the aim of gathering relevant data for evaluating the impact and relevance of the tax incentives enjoyed therein. A department was created in the service to take responsibility for gathering, analysing and putting relevant data in a usable format. The service guarantees the integrity of data and has also started to implement a policy to punish data leakages or abuse.
International policy trends

Data safeguards

Nigeria is part of the global forum on tax transparency and exchange information for tax purposes. Accordingly, the implementation of Country-by-Country Reporting (CbCR), the Automatic Exchange of Information (AEOI) and the Exchange of Information on Request (EOIR) is already a going concern.

In 2021, Nigeria obtained International Organization for Standardization (ISO) certification on data safeguards and passed a peer review in the same area, giving it the ability to receive information via AEOI starting from 2021.

Tax challenges of the digital economy

• Nigeria participated effectively, and has continued to participate, in the global policy negotiation with respect to Pillars One and Two, and suggested solutions to the problem resulting from the digitisation of the global economy. Key concerns about the possible negative impact of the rules on the ability of Nigeria to mobilise domestic revenue are:
  • broad definition of ‘unilateral measures’;
  • narrow scope of entities liable to Pillar One rules;
  • inclusion of mandatory binding arbitration;
  • complexity of the rules;
  • possible cost to its administration among others;
  • the global threshold is €20bn plus ten per cent profitability, while the in-country nexus threshold is €1m, which is equivalent to NGN 750m, for Pillar One;
  • MNEs that operate within Nigeria do not meet that global threshold and as such, Nigeria will not be able to tax them. Additionally, domestic companies with a minimum turnover of NGN 25m are subject to corporate income tax (CIT) and as such, the application of the in-country nexus threshold of NGN 750m to MNEs will be unfair.

Consequent upon the above, Nigeria braved all pressure to resist signing the OECD/G20 Inclusive Framework Statement of 8 October 2021. If our concerns are taken care of, Nigeria can key in.

Data related issues

<table>
<thead>
<tr>
<th></th>
<th>Before 2020</th>
<th>After 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate of minimum tax</td>
<td>0.5%</td>
<td>0.25%</td>
</tr>
<tr>
<td>Compensation for loss of office/job not exceeding NGN 10m</td>
<td>Not exempt from CGT</td>
<td>Exempt from CGT</td>
</tr>
<tr>
<td>Tax on the non-freight income of non-resident shipping and airline companies</td>
<td>Concessionary rate of section 14 of CITA</td>
<td>30% pursuant to section 40 of CITA</td>
</tr>
</tbody>
</table>