IMPACT ANALYSIS OF THE FINANCE ACT ON CORPORATE TAXATION IN NIGERIA[*]*

Abstract

Tax is legal civil responsibility imposed by the government on her citizens, either on individuals or corporate bodies with a view to raising funds to finance its responsibilities, economically, socially and politically. Thus the role of taxation in an emerging economy such as ours needs not be over-emphasized. Even for developed economy, taxation is seen as the most important source of revenue, in some cases accounting for as much as ninety percent of government revenue. However, for a tax regime to achieve the enumerated objectives, such a tax culture shall epitomize the rule on simplicity, coherence, clarity and elegance embedded in its taxing enactments. In that light, the Nigerian government inaugurated the Finance 2020 along with its subsequent amendments to promote fiscal equity by mitigating regressive taxation, reform domestic tax laws and align with global best practices. Thus the Companies Income Tax (CIT) is one of the taxing statutes amended by the Finance Act. The present paper, therefore, using doctrinal research methodology anchored on analytical approach, attempts to examine the impact analysis of the Finance Act on CIT. Thus the paper salutes the impact of the new Act on CIT in such areas as introduction of interest deductible rule for Nigerian companies, moderation of foreign loan exemption and simplification of rules on commencement and cessations, among others. Be that as it may, the new Act, as it were, is still being challenged in these fora; which includes its failure to capture the informal sector, apparent gaps on attainment of transparency and accountability in the nation's taxing enactments and lurk-warm apparent to sporting-up incentives to enthrone and sustain voluntary compliance. The paper, therefore, concludes with a proposal to further amend the contentious provisions of the Finance Act to embrace current agitations and challenges.

Keywords: impact analysis, corporate, taxing, finance.

1. Introduction

1.1. Historical Background of Companies' Income Tax in Nigeria

The war[1] had far reaching effect on the number of companies left. Thus the first CITA of 1939[2] died prematurely. Before the CITA 1993, companies income was taxed under the Personal Income Tax Act.[3] After undergoing several amendments, the Principal Act underwent several amendments and was consolidated in the 1990 Act.[4] CIT (Companies Income Tax) has always been a federal matter. It was contained in item of 52 of the Exclusive Legislative List of the Constitution[5]. In 2002-3, the Dotun Philips Tax Study Group was set up to review the Nigerian tax system. It noted the following:

i. CIT should be reduced from 30 percent to 20 percent because a low tax regime is the best incentive especially when coupled with good governance and economic stability.

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[1] AO Sanni, Consequential Effects of World War on Emerging Economy such as Ours: *The Guardian Newspaper* (Lagos, 23 May 2022) 32.

[2] Companies Income Tax Ordinance No. 14 1939.

[3] Companies Income Tax Act LFN 1961.

[4] Companies Income Tax Cap 60 LFN 1990.

[5] Constitution of Federal Republic of Nigerian (Third Alternation) Act 2010 (Act No. 3)

ii. The tax system was unduly complex and poorly administered therefore more nuisance than value constituting
iii. The tax system should be simplified such that tax be levied on only income and expenditure.
iv. Companies that are making losses not to be taxed… further, Tax exempt companies should not be subjected to withholding tax[6].

To this effect, there is an Amendment Act of 2007[7] which does not really implement any of the recommendations. We should note however that the Amendment process culminated in the ambivalence Nigeria is experiencing today as to the applicable CIT law. The dilemma can be traced to the attempt to reform the tax law envisioned by the Dotun Philips Tax Study in 2003. Thus the bill for the 2007 (Amendment) Act was based on the 2004 Laws of Federation of Nigerian (LFN). They (drafters of the, 2007Act) were however requested to go back and make the revision based on the 1990 LFN [219]

By the time that was done, LFN 1990 had been repealed. This notwithstanding, the CITA 2007 (which was made based on the repealed LFN 1990) was validated by the President[8]. By this twist of fate, every stakeholder (taxing authorities, taxing populace, tax experts and scholars) is now confused as to what is now the appliance law[9]. However, all hope was not lost with the emergence of the Finance Act[10]. The new legislation seems to have amended eighty tax provisions across the companies income tax, petroleum profits tax, personal income tax, value added tax, customs and excise duties, capital gains tax and stamp duties, among others[11]. Government further asserted that the new Act would promote fiscal equity by mitigating regressive taxation, reform domestic tax laws and align with global best practices[12].

Meanwhile, President Ahmed Tinubu has signed four executive orders[13] which he asserted, was done in keeping with his electoral promise to address unfriendly fiscal policies and multiple taxes that have been stifling the business environment. According to the President, these "Executive Orders on suspicion and deferred commencement of some taxes shall provide the necessary buffers and headroom to business is in the business sector to continue to thrive and expand.

1.2 Inauguration of Finance Act in Nigeria

On January 13, 2020, the then President of Nigeria[14] signed the Finance Bill into law, thus making it an Act after it secured legislative approval. The new Act was set to amend on fewer than eighty tax provisions across the companies' income tax, petroleum profits tax, personal income tax, value added tax, customs and excise duties, capital gains tax and stamp duties, among others. Thus the

[6] Olusegun Obusanjo's administration in July 2003 raised a 14-member study group headed by Dotun Philips to Brainstorm on the way forward for the Nigerians Tax system Available at https://www.firs. assessed 21 May 2023.
[7] Companies Income Tax (Amendment) Act 2007.
[8] ibid.
[9] ibid.
[10] Finance Act LFN 2019
[11] ibid.
[12] Z Ahmed, 'Finance Act: A New Dawn', *Vanguard Newspaper*, (Abuja, 31 January, 2020) 23.
[13] President Tinubu Signs four Executive Orders, *Daily Post Newspaper* (Abuja, 6 July, 2023) 34.
[14] S Musa, 'Buhari Okays Finance Bill,' *Thursday Newspaper* (Lagos, 23 January, 2020) 24.

new law has brought along since its inauguration, some mixed -up reactions from relevant stakeholders.

Heralding the Finance Act, Ahmed[15] asserted that, this was the first time since the return of democracy that a federal budget was being accompanied by the passage of a law specifically designed to support its implementation and to create an enabling environment for business and investment by the private sector. Ahmed further opined that the Finance Act was intended to raise necessary revenue required to defray public expenditure, support sustainable increase in public revenue and ensure that tax law provisions were consistent with the national tax policy objective of the federal government of Nigeria[16].

Ahmed had added that the Finance Act would promote fiscal equity by mitigating regressive taxation, reform domestic tax laws and align with global best practices as well as introduce tax incentives for investments in infrastructure and capital markets[17]. Thus, a tax veteran, Okwudili[18] corroborated the opinion of Ahmed that the new Act would support micro, small and medium – sized enterprises in line with government's Ease of Doing Business Reforms (EoDBRs). He envisaged that the new law would provide more revenue to finance government projects in health education and infrastructure. He therefore called for public support for the new tax legislation.

However, Maude, a tax expert was of the opinion that Nigerians were in for tough times with the commencement of the Finance Act. He observed that the impact of the new tax regime[19] would not go down well with Nigerians considering already the high inflation which has been biting hard on the citizens. Maude had noted that although the new tax initiative may turn in more revenue to the government, but that the timing was however wrong. He therefore observed thus, "considering that Nigerians have to battle with high prices of commodities, shoring up tax rates by the government was not a welcome development at this time[20]"

Agbeluyi of Chartered Institute of Taxation of Nigeria (CITN) however, was of the view that the Institute backed the new tax regime as it has clarified several grey areas[21] in the nation's tax system. He therefore submitted that "this was the first time in 20 years[22] since the return of democracy that the budget is accompanied with a Finance Act". Agbeluyi had observed that before now, politicians made blank statements[23] on capital projects without telling the masses how they intended to execute the project and with what revenue. He however observed that as such today the Finance Act was now specific on what was expected[24].

Agbeluyi revealed that CITN has been clamouring for the new law for several years that would explain in clear terms how government would intend to generate revenue and noted that, there has

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[15]ibid.
[16]ibid.
[17] ibid.
[18] J Okwudili, A new Face for Small and Medium Scale Enterprises, *The Guardian Newspapers* (Lagos, 7 February, 2020) 17.
[19] ibid.
[20]T Mauder, 'Nigerian now in for Tough Times', *The Authority Newspaper* (Abuja, 24 February, 2020) 36.
[21] W Agbeluyi, CITN News (Lagos, January-April Series, 2020) 39.
[22] ibid.
[23] ibid.
[24] ibid.

now been a link between the Ease of Doing Business among the micro, small and medium enterprises and the new Act which would enable the (MSMES) to thrive and operate. Agbeluyi therefore restored that, "as such, the CITN is therefore thankful to God that it is the first time managers of the economy are listening to tax professionals in Nigeria".

However, Egbasola, in his own reaction, regretted that, at the moment that Nigerians have been on one hand struggling with decreasing income and on the other hand, with increasing taxes. He thus declared, "while companies pay taxes out of their profits, common men pay out of compulsion, little wonder the land is filled with frustration, and various forms of vices and suicides[25]".The Finance Act has since its inception undergone several amendments[26]. We shall now examine the impact analysis of the Finance Act since its commencement on corporate taxation in Nigeria.

2. **Impact Analysis of Finance Act on Corporate Taxation in Nigeria**

i. Exemption of Profits from Excess Dividend Tax Rule

The Excess Dividend Tax (EDT) provision contained in the CITA[27] is intended as an anti-tax avoidance rule that creates a minimum level of protection against corporate tax avoidance using aggressive tax planning schemes. According to the rule, dividend paid by a company in any year should be deemed to be that company's taxable profit for the year, if the actual taxable profits are less than the dividend paid in the same year[28].

ii. Introduction of New Expense Deductibility Rules

The underlying principle for the tax/deductibility expenses in Nigeria is that such expenses must have been wholly, reasonably, exclusively and necessarily incurred for the purpose of this principle. However, if modifies the way the rules are applied with the intention of closing loopholes in the application of expense deductibility rules.

iii. Emergence of Gross-up Clauses

The Finance Act seeks to address the deductibility of taxes by a company on behalf of another person[29]. This, for instance, will affect Pay As-You-Earn taxes borne by some companies on behalf of their employees, and also transaction taxes borne on behalf of foreign service providers, landlords, etc. Thus such arrangements may need to be reviewed to manage the increased incidence of corporate tax they will create.

iv. Management Fees and other Related Party Cost

The Finance Act eliminates the bureaucracy associated with obtaining regulatory approvals required to claim management fee-related expenses and expenses incurred outside Nigeria for and on behalf of a company as a tax-deductible expense. Deductibility of these expenses has been the subject of debate, and even adjudication, in recent years.

[25] F Egbasola, 'A new Taxation Dawn, Tax *Law Journal* (2020) 34-39, also via https://www irs. Gov/pub/view) accessed 24 April, 2020.

[26] The Amendments covered Finance 2020, Finance 2021, Finance 2022 and Finance Act 2023 which has been suspended by the incumbent administration.

[27] Companies Income Tax (Amendment) Act; section 19 which imposed CIT on divided in excess of retained earnings has been amended to eliminate double taxation by the finance Act .

[28] ibid.

[29] Finance Act 2020 section 12.

Thus, the clarity the Finance Act brings, by basing the tax-deductibility of such related-party expenses on their consistency with their Transfer pricing (TP) Regulations, would in large parts resolved these controversies

v Simplification of Commencement and Cessation Rules

The CITA[30] hitherto provided special rules for determining the tax base of a company in the first three years of business and in the last two years of business. These rules, which were referred to as the "Commencement" and "Cessation" rules, respectively, had often resulted in double taxation of profits earned in one or more financial years of the company during these periods.

The Finance Act modifies the commencement and cessation rule such that companies pay taxes based on their accounting periods. The implication of this modification is that companies will now be allowed to prepare and file tax return in their first, second and third years of assessment based on their first, second and third sets of financial statements thereby eliminating the double tax risk associated with application of the erstwhile commencement and cessation rules.

vi. Moderation of Foreign Loan Exemption[31]

Under the erstwhile provisions of CITA[32], foreign companies were allowed to enjoy full (10%) or partial (10% or 70%) WHT exemption where the terms of a loan provided to a Nigeria person not the specific grace periods and loan tenor requirements under the CITA. However, the Finance Act modifies[33] this exemption by revising downward the WHT exemption applicable on interest income on foreign loans. The revised exemption rates are now 70%, 40% and 10% Furthermore, the Finance Act also attempts to resolve the extensive debate on the conditions for qualifying for the exemption by providing a definition for the terms, "repayment period" and "moratorium period[34].

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[30] ibid.
[31] Article 4 of 2015 Organization for Economic Co operation and Development (OECO) Report pp 301-398.
[32] Companies Income Tax (Amendment) Act sections 29 (3) and 29 94).
[33] Finance Act 2020 section 11.
[34] Companies Income Tax (n 33) section 16 (1) (c).
[35] Finance Act 2020 section 13.
[36] ibid.

viii. Changes to Modalities for Payment of Tax

Prior to enactment of the Finance Act, companies were allowed to pay their taxes either in full, within 60 days of the due date of filing their returns, or in a maximum of six-monthly installments with the final installments being paid before the 30th day of November in the relevant year assessment However, the Finance Act[37] modifies the applicable payment terms by;

(a) requiring companies filing self-assessment to pay their taxes in full on or before the due date of filing and

(b) offering a tax credit equal to 1% (2%) for medium sized companies) of the amount of tax paid, when a company pays its taxes 90 days before its due date for filing.

(c) increasing the applicable penalties and interest for late payment of taxes

(d) increasing the applicable penalties for late filing of tax returns to ₦50 in the first month and ₦25 subsequently.

viii. Application of Excise Duties to Excisable Imported Goods

Prior to enactment of the Finance Act, excise duty (ED) was applicable on excisable goods, such as cigarettes, wines, spirit, beer, stout etc, manufactured in Nigeria[38]. However, such goods when imported into Nigeria do not currently attract ED. The Finance Act seeks to address this disparity by subjecting imported excisable products to (ED). Therefore, importers of these products will be required to account for the duty to the Nigeria Customs Service, going forward as required under the Finance Act. The Act, however, exempt some categories of imported goods which are not locally manufactured/available from being charged to excise duties.

ix. Tax Holiday for Agro Business

The Finance Act amends section 23 (1) of the CITA[39] to grant tax exemption to companies engaged in agricultural production from tax for a period of five year(s) which can be extended for another three years subject to the determination of satisfactory performance of such business

x. New Face for Insurance Sector Law

The Insurance industry has long canvassed for amendments to the taxation framework for insurance business under the CITA to bring them at par with others. The Finance Act[40], therefore, repeals the detrimental insurance taxation provisions and replaces them with similar tax provisions applicable to other companies taxable under CITA. We expect that the amendments would improve the fortunes of the insurance industry and make it more viable.

In addition to the above, the Finance Act[41] also introduces a new minimum tax regime for general and life insurance companies which will be computed as 0.5% of gross premium for general insurance companies and 0.5% of gross income for life insurance business, respectively. This has effectively reversed the inequity between insurance companies and after companies taxable under CITA.

[37] ibid.
[38] ibid.
[39] Companies Income Tax (n 33) section 23.
[40] Finance Act (n 36) Seventh Schedule
[41] ibid.

3. Apparent Gaps Still Derailing the Actualization of the Finance Act

3.1 Clog to Exemption of profits from Excess Dividend Tax

A strict interpretation of this provision has sometimes resulted in further taxation of profits that have already suffered tax, i.e, after –tax profits transferred to retained earnings account. In some other instances, this provision has been applied to dividends paid out of tax-exempt profits, thereby effectively rescinding the tax – exemption on those profits. The unintended consequences of a strict interpretation of the rule has caused several disputes between taxpayers and the Federal Inland Revenue Service (FIRS), some of which have been adjudicated on by the courts in favour of the FIRS[42].

3.2 Gaps in Modalities for Payment of CIT

Whilst heralding the modalities initiated by the Act for payment of tax by corporate bodies in Nigeria, yet a good number of tax stakeholders have been of the opinion that the new legislation on incentives to encourage compliance, among others, seem not to have offered significant incentives[43] to stimulate the type of taxpayer behaviour envisaged by the government to improve upon taxpayers compliance, ease tax administration and enforce prompt payment of taxes.

3.3 Apparent Lacuna on Tax Holiday for Agro Business Law

It is no longer news that the Act has amended the CITA to grant tax exemption to companies engaged in agricultural production for some certain periods. However, the Act does not stipulate a framework for granting this incentive, which is probably better placed in the Industrial Development (Income Tax Relief) Act[44] (IDITRA) as an incentive that can be granted by the President on the recommendation of the Nigeria Investment Promotion Council through the Minister for Industry.

3.4 Obvious Loophole in the New Face Policy for Insurance Sector Law

The author commends the Finance Act in putting to an end to the inequity in the legal framework for insurance business under the CITA to bring them at par with other businesses[45] However, the Finance Act does not include a specific definition for "gross premium[46]" for the purpose of computing minimum tax for general insurance companies to take into account the peculiar accounting requirements for insurance businesses. Both Gross premium written, and Gross premium income are reflected on the income statement of an insurance company. Hence, it is necessary to clearly define "gross premium "for the purpose of insurance minimum tax calculations to avoid ambiguity in the application of this provision.

3.5 Failure of the Finance Act to Curb Tax Apathy

The new tax regime has failed again to embolden citizens to fight against fiscal impunity as was witnessed in the past[47]. The scenario looks as if government is all about embezzlement of tax revenues. Thus an average Nigerian has apathy towards tax payments because our successive leaders seem to have demonstrated little or nothing to justify taxes collected from past decades.

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[42] ibid.
[43] ibid.
[44] *Ikine v Edjerade* (2001) 18 NWLR (pt 745) 446 5c); *Leadway Assurance Company Limited*. v Jumbo United Coy (2005) 5 NWLR (pt 919) 539.
[45] Finance Act section 57.
[46] Companies Income Tax (n 33) section 31.
[47] Finance (n 33) section. 56.

Furthermore, tax stakeholders[48] have also regretted that the Finance Act failed to outline measures to capture the informal sector[49].

4. Conclusion and Recommendations

The author hereby joins other tax stakeholders in heralding the inauguration of the new tax regime ignited by the Finance Act. The new legislation would promote fiscal equity by mitigating regressive taxation, reform domestic tax laws and aligns with global best practices as well as introduce tax incentives for investments in infrastructure and capital markets, among others.

However, the author holds the view, and firmly too, that the new tax regime as being led by the Finance Act cannot achieve the set objectives on corporate taxation unless and until certain provisions that seem contentious are amended to embrace current agitations and expectations of stakeholders. In that light, the author advocates further amendments of the provisions on Exemption of Profits from Excess Dividend Tax Rule to curb double and multiple taxation on the face of the extant law. There is also a need to review upward the current incentives on compliance with the extant provision on the new face for payment of CIT to improve upon tax payer compliance, ease tax administration and enforce prompt payment of taxes. The author is of the firm view that if the envisioned foregoing amendments, among others, are effected, that the advocacy being canvassed would enthrone and sustain an envisioned corporate taxation in Nigeria.

[48] PIT (Amendment) Act section 31.

[49] T Mukter *et al*, "New Finance Act: Reality or Myth? *The Sun Newspaper* (Abuja, 7th February, 2020) Front Page.