



National Tax Policy

FEDERAL MINISTRY OF FINANCE

NOVEMBER, 2016

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FOREWORD

This administration is committed to diversifying the sources of government revenues by significantly increasing tax to Gross Domestic Product (GDP) ratio, among other things. The attainment of this laudable objective will require an overhaul of our tax policy which is a key function of the Ministry of Finance. Businesses react to tax policy. We are therefore determined to ensure that ours sends the right message to both local and international investors.

Despite the existence of National Tax Policy (NTP) since 2012, it would appear that most of the key stakeholders are not sufficiently aware of its provisions resulting in non-implementation. To address this problem, I inaugurated a Committee on the 10th of August, 2016 to review the NTP and recommend workable implementation strategies.

The Committee has produced a slim, simple and concise revised policy with clear implementation and monitoring strategies for stakeholders in the Nigeria tax system. We are confident that the revised Policy will eventually give a new lease of life to, and inspire far-reaching reform of, the Nigeria tax system in terms of structure, number of taxes, and administration within the context of our peculiar environment. This Government remains committed to the continuous improvement of our tax system towards the attainment of our objectives. Thus, tax policy review will be a continuous exercise, as a means of evolving with global best practices.

Special thanks to the members of the National Tax Policy Review Committee under the Chairmanship of Prof. Abiola Sanni for their steadfastness and commitment to their mandate within a tight schedule. I acknowledge the contributions of other key stakeholders including Mr. Babatunde Fowler, the Executive Chairman of the Federal Inland Revenue Service, resource persons and stakeholders who submitted inputs to the Committee. I also thank the staff of the Federal Ministry of Finance for working assiduously towards the completion of the assignment.

Mrs. Kemi Adeosun

Honourable Minister of Finance

November, 2016

Chapter One

Introduction

1.1 Background

The National Tax Policy (NTP) was first published in 2012, as part of the efforts to entrench a robust and efficient tax system in Nigeria. Four years after, the rapidly changing commercial environment and persistent low tax to Gross Domestic Product (GDP) ratio among other developments, demand new strategies to continue to meet government objectives of creating an enabling environment, simplifying the tax system and ensuring ease of compliance. It has become imperative to review and update the NTP.

1.2 Definition of Tax

For the purpose of this Policy, “tax” is any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not.

1.3 Constitutional Provisions

Chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 contains Fundamental Objectives and Directive Principles of State Policy which are relevant to the NTP. In this regard, appropriate tax laws, administrative processes and procedure should be made to advance the Constitutional provisions. Therefore, tax policies, laws and administration shall promote the attainment of the following:

- a) the ability of all taxable persons to declare their income honestly to appropriate and lawful agencies and pay their tax promptly;
- b) residence rights of Nigerians, free mobility of people, goods and services throughout the federation;
- c) promoting fiscal responsibility and accountability that reflects the principle of fiscal federalism;
- d) ensuring that the rights of all taxable persons are recognized and protected;
- e) eradicating corrupt practices and abuse of authority in the tax system;
- f) ensuring that the resources of the nation promote national prosperity and self-reliant economy;
- g) securing maximum welfare, justice and equity;
- h) ensuring that the resources of the nation are harnessed and distributed to serve the common good;
- i) promoting and protecting Nigeria’s national interest;
- j) promoting African integration, international co-operation and eliminating discrimination; and
- k) respecting international law and treaty obligations.

1.4 Challenges of Nigeria Tax System

Despite the potentials of taxation as a dynamic tool for sustainable national development, Nigeria tax system has been unable to achieve its objectives due to the following challenges, among others:

- lack of robust framework for the taxation of informal sector and high network individuals, thus limiting the revenue base and creating inequity;
- fragmented database of taxpayers and weak structure for exchange of information by and with tax authorities, resulting in revenue leakage;
- inordinate drive by all tiers of government to grow internally generated revenue which has led to the arbitrary exercise of regulatory powers for revenue purpose;
- lack of clarity on taxation powers of each level of government and encroachment on the powers of one level of government by another;
- insufficient information available to taxpayers on tax compliance requirements thus creating uncertainty and non-compliance;
- poor accountability for tax revenue;
- insufficient capacity which has led to the delegation of powers of revenue officials to third parties, thereby creating complications in the tax system;
- use of aggressive and unorthodox methods for tax collection;
- failure by tax authorities to honour refund obligations to taxpayers;
- the non-regular review of tax legislation, which has led to obsolete laws, that do not reflect current economic realities; and
- lack of strict adherence to tax policy direction and procedural guidelines for the operation of the various tax authorities.

1.5 Objectives of the National Tax Policy

The National Tax Policy provides the fundamental guidelines for the orderly development of the Nigeria tax system. The Policy is expected to achieve the following specific objectives, among others;

- guide the operation and review of the tax system;
- provide the basis for future tax legislation and administration;
- serve as a point of reference for all stakeholders on taxation;
- provide benchmark on which stakeholders shall be held accountable; and
- provide clarity on the roles and responsibilities of Stakeholders in the tax System.

Chapter Two

Policy Guidelines

Tax Policy provides a framework for a sustainable system that would ensure reliable sources of revenue to government and support the economic development of the nation.

2.1 Guiding Principles of Nigeria Tax System

All existing and future taxes are expected to align with the following fundamental features:

Equity and Fairness: Nigeria tax system should be fair and equitable devoid of discrimination. Taxpayers should be required to pay according to their ability.

Simplicity, Certainty and Clarity: Tax laws and administrative processes should be simple, clear and easy to understand.

Convenience: The time and manner for the fulfilment of tax obligations shall take into account the convenience of taxpayers and avoid undue difficulties.

Low Compliance Cost: The financial and economic cost of compliance to the taxpayer should be kept to the barest minimum.

Low Cost of Administration: Tax Administration in Nigeria should be efficient and cost-effective in line with international best practices.

Flexibility: Taxation should be flexible and dynamic to respond to changing circumstances in the economy in a manner that does not retard economic activities.

Sustainability: The tax system should promote sustainable revenue, economic growth and development. There should be a synergy between tax policies and other economic policies of government.

2.2 Taxation as a Tool for Economic Management and Development

The tax system should support sustainable growth and development at all times. In this regard, the tax system should be geared towards meeting the following goals:

2.2.1 Wealth Creation and Employment

The tax system should be designed to promote social, political and economic development. Accordingly,

- i. tax policies shall promote employment, export and local production;
- ii. tax policies and laws shall not be retroactive;
- iii. tax policies and laws should ensure equal investment opportunities and support for businesses whether local or foreign;
- iv. tax policies and laws on investments should be long term focused and tenured to enable investors plan with reasonable certainty;
- v. any incentive to be granted should be broad, sector based, tenured and transparent. Implementation should be properly monitored, evaluated, periodically reported and kept under review;
- vi. revenue forgone from tax incentives or concessions should be quantified against expected benefits and reported annually. Where the benefits cannot be quantified, qualitative factors must be considered; and
- vii. tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.

2.2.2 Taxation and Diversification

There should be concerted efforts to attract investments in all sectors of the economy, with more focus on promoting investment in specific sectors as may be identified by government in the overall interest of the country from time to time. This will boost the revenue base for optimum revenue generation.

2.2.3 Focus on Indirect Taxation

The tax system should focus more on indirect taxes which are easier to collect and administer and more difficult to evade.

Tax rates should be progressive and should be designed to promote equality. The tax system should gradually seek a convergence of personal income tax and capital gain tax rates with corporate income tax rates to reduce opportunities for tax avoidance.

2.2.4 Convergence of Tax Rates

Tax rates should be progressive and should be designed to promote equality. The tax system should gradually seek a convergence of the highest marginal rate of personal income tax, capital gains tax rates and the general companies income tax rates to reduce opportunities for tax avoidance.

2.2.5 Special Arrangements and Other Incentives

Special arrangements should be sector based and not directed at entities or persons. Also, special arrangements such as free zones and other tax incentives or waivers should not be arbitrarily terminated except as provided in the enabling legal framework or treaties at the time of creation. Government may provide tax incentives to specific sectors or for such specific activities in order to stimulate or retain investment in the sector.

The process of granting and renewing incentives, waivers and concessions shall be transparent and comply strictly with legislative provisions and international treaties.

2.2.6 Creating a Competitive Edge

i. Reduction in the Number of Taxes

Taxes should be few in number, broad-based and high revenue-yielding. The administration of the taxes should also be simplified for ease of enforcement and compliance.

ii. Avoidance of Multiple Taxation

Taxes similar to those being collected by a level of Government should not be introduced by the same or another level of Government. The Federal, State and Local Governments shall ensure collaboration in harmonizing and eliminating multiple taxation.

2.2.7 International and Regional Treaties

A wide network of International and Regional treaties would be beneficial to the economy. In this regard, Nigeria shall continue to expand its treaty network in the best interest of the Nigerian State. Generally, treaties should prevent double taxation without creating opportunities for non-taxation.

Existing treaties should be reviewed regularly and where necessary renegotiated in line with international best practices. New treaties should consider benefits to Nigeria both in the short, medium but more importantly long term.

Nigeria's model double tax treaty should be regularly reviewed to adequately cater for the best interests of the country. Appropriate measures shall be taken to ensure that all treaties duly signed and ratified are implemented.

Chapter Three

Responsibilities of Stakeholders

For an orderly and sustainable development of the Nigeria tax system, the Federal and State Ministries of Finance shall have the primary responsibility for tax policy matters, including initiating proposals for amendments to tax Laws. Ministries of Finance shall collaborate with relevant Stakeholders in carrying out their tax policy responsibilities. The key stakeholders in the Nigeria tax system can be broadly categorised as follows:

3.1 The Government

All levels and arms of Government, Ministries, Extra-Ministerial Departments and Agencies where applicable shall:

- i. implement and regularly review tax policies and laws;
- ii. provide information on all revenue collected on a quarterly basis;
- iii. ensure adequate funding, administrative and operational autonomy of tax authorities; and
- iv. ensure a reasonable transition period of between three and six months before implementation of a new tax.

3.2 The Taxpayer

A taxpayer is a person, group of persons or an entity that pays or is liable to tax. The taxpayer is the most critical stakeholder and primary focus of the tax system. The taxpayer shall consider tax responsibilities as a civic obligation and constant duty that must be discharged as and when due. The taxpayer shall be entitled to:

- i. relevant information for the discharge of tax obligations;
- ii. receive prompt, courteous and professional assistance in dealing with tax authorities;
- iii. raise objections to decisions and assessments and receive response within a reasonable time;
- iv. a fair and impartial appeal; and
- v. self-representation or by any agent of choice, provided an agent acting for financial reward shall be an accredited tax practitioner.

3.3 Revenue Agencies

Any agencies responsible for the collection and administration of revenue shall:

- i. treat the taxpayer as a customer;
- ii. ensure efficient implementation of tax policies, laws and international treaties;
- iii. facilitate inter-agency co-operation and exchange of information;
- iv. undertake timely audits and investigations;
- v. undertake tax awareness and taxpayers' education, and
- vi. establish a robust process to prevent, detect and punish corrupt tax officials

3.4 Professional Bodies, Tax Practitioners, Consultants and Agents

They shall:

- i. act in accordance with professional code of conduct and ethics;
- ii. not aid and abet tax evasion and corrupt practices, and
- iii. actively promote effective tax compliance.

3.5 Media and Advocacy Groups

They shall:

- i. promote tax education and awareness;
- ii. articulate, protect and advance taxpayers right;
- iii. advance accountability and transparency in the utilization of tax revenue;
- iv. ensure accurate, objective and balanced reporting in accordance with their professional code of conduct and ethics; and
- v. ensure that aspiring political office holders clearly understand the Tax Policy and the Nigerian tax system and are able to articulate their plans for the tax system to which they will be held accountable.

Chapter Four

Tax Administration

Tax administration in Nigeria cuts across the three-tiers of Government. This tax policy document establishes clear guidelines on crucial tax administration issues.

In the context of the Nigerian Tax Policy, tax authorities at all levels shall administer their mandates in accordance with the following:

4.1 Registration of Taxable Persons

All taxable persons shall be registered and issued with Taxpayer Identification Number (TIN) applicable nationwide. Tax authorities should leverage on the database of the Central Bank of Nigeria on Bank Verification Number (BVN), National Identity Management Commission (NIMC), Nigeria Communication Commission (NCC), Corporate Affairs Commission (CAC), Federal Road Safety Commission (FRSC), Nigeria Immigration Service (NIS) and other relevant sources. The current uncoordinated registration by different agencies should be harmonised.

4.2 Tax Compliance

Government shall apply all available resources and tools at their disposal to ensure that taxpayers voluntarily comply with their tax obligations. In order to improve voluntary compliance, the relevant authorities should ensure:

- i. that the option for self-assessment is in place, and the process and procedures are simple;
- ii. development of frameworks for tax amnesty in order to expand the tax net;
- iii. focus on taxpayers' services,
- iv. constant tax education and enlightenment;
- v. the overall performance of the tax system is measured and reported periodically, and
- vi. the establishment of a system to recognize and honour compliant taxpayers.

4.3 Efficiency of Administration

Payment Processing and Collection

Collection system shall leverage on modern technology towards advancing ease of payment and prevention of revenue losses.

Record Keeping

Tax authorities shall partner with the relevant agencies to setup automated systems and adequately train tax officials in the use and maintenance of such systems. Electronic systems of record keeping in line with global best practices should be entrenched to enhance the tax administration process.

Exchange of Information

Tax authorities shall develop an efficient framework for cooperation and sharing of information with other tax authorities and relevant local and international agencies. This will mitigate tax evasion and revenue losses.

Enforcement of Tax Laws

Tax authorities shall ensure the enforcement of civil and criminal sanctions as provided under the various tax laws.

Funding of Tax Authorities

Government shall provide adequate funding for tax authorities. Accordingly, Government should ensure that an adequate percentage of revenue collected should be provided to the authority for its operations.

Funding for Tax Refunds

Government shall provide adequate funding to meet refund obligations. Tax authorities shall ensure timely and efficient payment of refunds.

Ease of Paying Taxes

Tax authorities shall ensure that payment procedures and documentation are convenient and cost effective. Tax authorities shall work towards ensuring accelerated improvement on the global index of ease of paying taxes.

Revenue Autonomy

Governments shall ensure a reasonable level of financial and administrative autonomy for their respective tax authorities to facilitate effective discharge of their duties.

4.4 Technology and Tax Intelligence

Tax authorities shall ensure:

- i. deployment of technology to aid all aspects of tax administration;
- ii. the integrity and regular update of the database; and

- iii. a workable and secure structure for intelligence and information gathering.

4.5 Dispute Resolution

In the event of any dispute, the tax authority and relevant stakeholders shall leverage on all amicable means of dispute resolution including arbitration and only resort to judicial determination as a last resort.

Chapter Five

Implementation

The effective implementation of the National Tax Policy is crucial for Nigeria to attain the set goals. The Federal Ministry of Finance has a pivotal role to play in the development and implementation of the Tax Policy. Accordingly, the Ministry shall take appropriate steps to ensure effective implementation of the following.

5.1 Implementation Measures

The President and Governors

- i. The President and Governors shall ensure that Budget Speeches and presentations for the fiscal year consistently contain the overriding fiscal policies and summary statements of the expected tax revenue. This will give key stakeholders a sense of what government plans to do and enable them to plan accordingly.
- ii. The President and Governors should work towards ensuring that there is only one revenue agency per level of government. This would streamline revenue administration and improve efficiency of revenue collection. Ministries, Extra-Ministerial Departments and Agencies other than tax authorities should not become tax collecting bodies.
- iii. The Executive shall sponsor a bill for the establishment of a tax court as an independent body to adjudicate in tax matters.

Legislature

- iv. The consideration and passage of tax bills have not fared well within the existing Finance Committee of the National and State Houses of Assembly. The National and State Houses of Assembly are encouraged to establish a Taxation Committee to focus on tax matters and collaborate with the Tax Policy Implementation Committee.
- v. There shall be an Establishment Act for the Joint Tax Board towards strengthening and repositioning it to contribute meaningfully to the development of the Nigeria tax system through broader mandate beyond its current advisory role.
- vi. The qualification for the lower income tax rate applicable to small businesses should be reviewed in line with current economic realities. The income tax rate for small businesses should be further reduced as an incentive to encourage compliance and promote Micro, Small and Medium Enterprises (MSMEs).

- vii. There should be a minimum threshold for VAT registration and compliance in order to protect micro-businesses.

Ministry of Finance

- viii. The Minister of Finance shall set in motion machinery for tax reform. Taxation is a dynamic tool. Having reviewed the policy, the tax law and administration cannot remain stagnant. It is imperative to streamline existing and future tax laws for an orderly development.
- ix. The Minister of Finance shall establish a Tax Policy Implementation Committee to monitor compliance, regularly review the Policy and make appropriate recommendations.
- x. The Minister of Finance/Commissioners of Finance shall ensure automation of collection and remittance processes of taxes by all Ministries, Extra-Ministerial Departments and Agencies.
- xi. The Ministry of Finance shall work with the Legislature to ensure that the requisite changes to tax laws are enacted together with the Appropriation Act of the same year. This would require the executive to timely present tax laws as executive bill for the timely consideration of the National and State House of assemblies.
- xii. Ministry of Finance shall establish an Office of Tax Simplification which shall be responsible for ensuring continuous improvement to tax legislation and administration.
- xiii. Ministry of Finance shall create a dedicated tax policy website. Apart from sensitizing the general public on the provisions of the Tax Policy, such a platform would facilitate feedback from stakeholders on the existing and future policy proposals.
- xiv. The Minister of Finance shall give periodic reports to the National Economic Council (NEC) on tax policy implementation agenda. Apart from updating NEC, such obligation will ensure that the Ministry of Finance is up to speed in its implementation agenda.
- xv. Ministry of Finance shall ensure that tax authorities develop Key Performance Indices for Nigeria to attain a top 50 position on the global index of ease of paying taxes by 2020 and consistently improve on the ranking.

Ministries, Departments and Agencies (MDAs)

- xvi. Head of MDAs shall give periodic report(s) to the Ministry of Finance on the level of implementation of the National Tax Policy. Apart from sensitizing the MDAs to the provisions of the Tax Policy, such reports would afford the Ministry of Finance the opportunity to determine the level of compliance and devise appropriate responses as may be necessary to improve implementation.

Tax Authorities

- xvii. To promote tax awareness and a tax culture in Nigeria, the Federal and State tax authorities through the Joint Tax Board shall set aside a uniform day in the year as a National Tax Day. Also,

Government should make concerted efforts to ensure that taxation is taught at all levels of education.

- xviii. Tax authorities shall establish administrative framework for amnesty and whistle blowing as part of the strategies for curbing evasion and widening the tax net.
- xix. Federal and State Tax authorities should respond promptly to the changing business environment as it affects tax administration and develop a workable framework to meet the taxpayer demands in this respect.

Independent National Electoral Commission (INEC)

- xx. The Independent National Electoral Commission (INEC) shall by necessary Regulation and Rules mandate political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns. This will make political parties reflect more deeply in an organized fashion on the financial implications of their promises and the options of financing them. This would also help the taxpayer know the preferences of each party on tax matters and take informed decision.

5.2 Conclusion

The main thrust of the Tax Policy is to establish fundamental principles to guide an orderly development of the Nigeria tax system towards meeting its overall objectives. In this regard, the Policy highlights the Fundamental Objectives contained in Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria and reinforces the need for tax laws and administrative practices to promote economic development. The Policy highlights the challenges confronting the Nigeria tax system and key policy principles to address them. It recognises the roles played by key stakeholders in the development of an effective tax system, and clearly states their rights and duties. The Policy also highlights the need for effective Tax Administration through the development of mandates which relevant Tax Authorities should seek to achieve in their pursuit of an effective and efficient tax system.

Finally, the Policy reinforces the role of the Ministry of Finance in the formulation, coordination and most importantly monitoring the implementation of the tax policy on an ongoing basis. It recognises the need for a holistic review of the various components of the Tax System [Laws and Administration]. It requires all stakeholders to be fully committed to playing their parts towards achieving the set objectives.

PROVISIONS AND REGULATIONS RECOMMENDED FOR AMENDMENT BY HONOURABLE MINISTER OF FINANCE

| S/N | Subject Matter | Proposal | Justification |
|-----|---|--|--|
| 1 | Tax deductibility based on NOTAP and TP Regulations (Section 27 (g,h) of CITA) | <ul style="list-style-type: none"> • As Transfer Pricing is tax legislation, the TP documentation should supersede the NOTAP approval for the purposes of tax deductibility. This policy should be harmonised between the Ministry of Information and Technology, the Central Bank of Nigeria and the Ministry of Finance. • Aligning NOTAP and TP regulations to ensure NOTAP agreed payments is always consistent with the TP basis for deductibility to ensure NOTAP is more commercial in application. | <ul style="list-style-type: none"> • It aligns the issuance of forex, tax deductibility and justification of any technology transfer. |
| 2 | Pre-incorporation expenses (Section 27 of CITA) | <ul style="list-style-type: none"> • There is no rule that specifically deals with such expenses. There should be a specific provision to allow for a deduction for such expenses either via capital allowances or a revenue deduction. | <ul style="list-style-type: none"> • To provide clarity and allow a deduction for legitimate business expenditure. |
| 3 | Interest and penalties for tax default (Section 32 and 40 of FIRS Act) | <ul style="list-style-type: none"> • The interest rate applied by the Revenue should reflect a reasonable commercial lending rate and if it is a one off charge, it should be clear whether it is simple or compound interest. • Interest should be a two way obligation and should be triggered on the date the tax due should have been assessed or the date the refund becomes due. • With respect to disputed liabilities, the TAT should be given the powers to decide whether interest and/or penalty will apply and from which date. | <ul style="list-style-type: none"> • To aid clarity and reflect commercial circumstances. |
| 4 | Capital allowances on certain items | <ul style="list-style-type: none"> • The second schedule to CIT should include assets such as ships, aircraft and intangible assets. | <ul style="list-style-type: none"> • Such specific and specialised items should be categorised and treated specifically to avoid uncertainty. |
| 5 | Artificial transactions | <p>CITA and the CGT Act both stipulate that transactions must be at arm's length and leaves the determination of the arm's length basis at the discretion of the tax authority. This is inappropriate in the light of the TP rules and OECD guidelines. Therefore, this provision should</p> <p>be clarified to specify that the tax authority would have to provide justification in line with TP Regulations.</p> | <ul style="list-style-type: none"> • Avoids excessive subjectivity and duplication. |

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| 6 | Ministerial and FIRS approval for tax deductions (Section 27 (1) (h) of CITA) | <ul style="list-style-type: none"> The deduction for management expenses and expenses incurred outside Nigeria give the Minister of Finance and FIRS respectively the power to approve such deductions. This is inappropriate in the light of the WREN and TP rules. Furthermore, these provisions merely cause an unnecessary additional administrative burden. | <ul style="list-style-type: none"> Avoids excessive subjectivity and duplication. |
| 7 | Clarity on withholding tax regulation (WHT Regulations) | <ul style="list-style-type: none"> -Clarify that there is no withholding tax on the sale of goods by clarifying the definition of “ordinary course of business” through Regulations. -Dividends, rent, interest and royalty should be 10% WHT, and construction contracts at 2.5%, all other items should be 5%. -Clarify that reimbursements (of whatever nature) are exempt from except the reimbursements relate to foreign purchases which have not been subject to WHT in accordance with the law. -Include a threshold of compliance whereby companies that have a low risk based on their tax governance structure are exempt from WHT on their invoices to customers | <ul style="list-style-type: none"> - This eases the current position where the WHT tax rate on sales of goods and other items are sometimes higher than the profit margin generated by the supplier. |
| 8 | Pioneer Legislation (S.14 IDITRA) | <ul style="list-style-type: none"> - Pioneer legislation should be assessed whether it should be continued based on the value it has added to government versus the cost. A sectoral (based on industry) or geographical (based on where factory is located e.g. outside Lagos, PH, Abuja or Ogun) exemption without discretion granted to any government authority should be considered for equity based on parameters outlined under “Tax incentives” - The March 2015 list is outdated and should be revisited to align with current realities. - Incidental income to a pioneer business (such as interest income) should be clearly defined in the tax law on whether they are taxable or exempt during the relief period. - Pre-pioneer tax losses and Pre-pioneer qualifying capital expenditure carried forward to post pioneer periods should be clarified. | <ul style="list-style-type: none"> Tax incentives should provide a net benefit to the country. They should also be available equally to all persons in the same class. Provisions on tax incentives should also be very clear and avoid ambiguity. |
| 9 | Intra-group transactions | <ul style="list-style-type: none"> Companies within a group (e.g. 75% effective ownership group) should be able to transact free from WHT, and VAT. | <ul style="list-style-type: none"> This will encourage business (particularly Nigerian conglomerates) to organise themselves more efficiently and avoid unnecessary tax leakage and additional cost of doing business. |
| 10 | Stamp Duty (Stamp Duty Act) | <ul style="list-style-type: none"> The Stamp Act is currently not fit for purpose, it is outdated. A transaction could fall within a number of provisions. Stamp duty should be applicable on specifically designed instruments or based on underlying transactions (rather than instruments) to tackle | <p>Currently the cost of administering the Act is higher than the benefit. There is also breach of law with regards to the CBN circular on Stamp duty which could lead to cash refund to depositors based on court judgments or refund</p> |

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| | | <p>avoidance.</p> <ul style="list-style-type: none"> The old Act should be repealed and a new act should be enacted to specify the specific instruments that will be stamped and the rate of the duty. | to State governments. A more efficient mechanism for taxing consumption is through VAT |
| 11 | Franked Investment Income | The rules on offsetting of WHT on franked dividend income by a company which is further distributed to individuals should be clarified. | <ul style="list-style-type: none"> To avoid multiple taxation on the same income. |

Laws and Regulations recommended for review and amendment by BY NASS

| S/N | Subject Matter | Proposal | Justification |
|-----|---|--|---|
| 1 | Commencement, Change of Accounting and Cessation Rules (Section 29 of CITA) | These rules should be taken out of CITA. | <ul style="list-style-type: none"> These rules are complicated and places unnecessary compliance burden on the taxpayers. Particularly, the commencement rule often leads to double taxation of a company at its early stage and increases the chances of failure. <p>A company should be taxed based on the profit it earns and its ability to compensate shareholders through dividends. This should be reflected by the normal profits earned each accounting year.</p> |
| 2 | Excess Dividend Tax (Section 19 of CITA) | Redrafting the excess dividend tax provision in CITA to specifically exempt franked investment income, capital gains, income exempt under other provisions of the law e.g pioneer profit, income from bonds, prior year already taxed retained earnings, and dividends received from foreign subsidiaries. | <ul style="list-style-type: none"> To make Nigeria a favourable jurisdiction for incorporating HoldCos and to place Nigeria in a favourable position to be considered as the West African Hub for investments in the ECOWAS region. Preventing double taxation Most companies in Nigeria are already moving to neighbouring and other countries with favourable tax legislation for HoldCos |
| 3 | Minimum tax (Section 33 of CITA) | The exemption for foreign companies with at least 25% imported equity should be removed as it is considered discriminatory to Nigerian companies. | <ul style="list-style-type: none"> Loss making companies are usually forced to pay tax out of equity or further increasing the already existing negative retained earnings. |

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| | | <ul style="list-style-type: none"> Overall, minimum tax should be removed altogether, OR minimum tax should be imposed on a percentage of turnover e.g. 0.3 %. When a company is assessed to minimum tax, the company should be able to carry forward all its unutilized capital allowances and tax losses that has not been used in computing the minimum tax. | <ul style="list-style-type: none"> Where a company has claimed capital allowances in arriving at the loss for tax purposes and it pays minimum tax, it loses the capital allowance claimed in effect. The government can collect minimum tax fairly in instances where profit shifting has resulted in losses in the local operating entity. |
| 4. | Taxation of Insurance companies (Section 16 of CITA) | <ul style="list-style-type: none"> The proposals by the Nigeria Insurers Association to amend the law to deal with ambiguities should be considered and agreed amendments adopted in the next one year. The definition of insurance companies in section 16 should be made clear to exclude Health Maintenance Organisations as they are not required to keep their | <ul style="list-style-type: none"> This is necessary to provide more certainty for insurance companies, which is a developing industry. |
| 5. | VAT | <p>The current VAT Act should be repealed and replaced with an entirely new VAT Act immediately as a matter of urgency. The VAT Act should be aligned with global best practices.</p> <p>Considerations should include:</p> <ul style="list-style-type: none"> Definition of Vatable persons (a threshold should be in place before a person is registerable for VAT). Input VAT recovery on all inputs (including overheads) regardless of the nature of the Vatable supply. Definition of goods and services. Destination principle should be adopted to give clarity on the point at which VAT is applicable on a particular supply. There should be a workable refund mechanism (Loss of input VAT). Expanding the definition of input VAT. Expand the list of items that are zero rated to enable input VAT recovery for the supplier. Financial services should be treated as exempt. Reverse charge should apply on e-commerce transactions Customs legislation should be aligned with the VAT. VAT should be on a cash basis rather than accrual basis to align with how most businesses in Nigeria operate. | <p>These changes should:</p> <ul style="list-style-type: none"> Align Nigerian VAT Act with that of other jurisdictions to avoid double taxation and double non-taxation Align Nigerian VAT with international best practices Plug the current significant loss of VAT revenue related to cross-border services and intangibles Minimize the high cost of doing business in Nigeria. E.g. it is currently often not highlighted that the hidden cost of irrecoverability of input VAT and multiple layers of VAT flows to final cost to business and the economy. Provide more clarity on transactions, goods and persons to be taxed. Make the sale of goods and services by Nigerian businesses to be at par with foreign jurisdictions. Make Nigerian VAT a real value added tax on consumption that is to be borne by the final consumer. |

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| | | <ul style="list-style-type: none"> - VAT of bad debt should be reclaimable without unnecessary bottlenecks. - Deduction of VAT at source by government and companies in the oil and gas sector should be scrapped as it leaves vendors with claimable input VAT without adequate output VAT. - Exemption of VAT on exported services should be more clearly defined. - Consideration should be given to a progressive VAT system e.g. higher VAT rate on luxury items e.g. cars, planes, jewellery. Whilst there should be an expansion of exemption on basic food and other items considered to be essential to the poor. | |
| 6. | <p>Tax losses carried forward</p> <p>(S.31 (2ii) of CITA)</p> | <ul style="list-style-type: none"> -Amendment of the law to clarify that tax losses can be carried forward indefinitely in line with the 2007 Amendments. -Give effect to group tax loss relief. Entities in a group should be able to relief tax losses amongst themselves. | <ul style="list-style-type: none"> - This change should remove the current uncertainty in the law. - Group loss relief will also allow groups of related parties to organize themselves more efficiently and assist related parties to grow by benefiting from investments made by principals in other areas of the group’s business. |
| 7. | Intra-group transactions | <ul style="list-style-type: none"> • Companies within a group (e.g. 75% effective ownership group) should be able to transact free from CGT | <ul style="list-style-type: none"> • This will encourage business (particularly Nigerian conglomerates) to organise themselves more efficiently and avoid unnecessary tax leakage and additional cost of doing business. |
| 8. | <p>Stamp Duty</p> <p>(Stamp Duty Act)</p> | <ul style="list-style-type: none"> • The Stamp Act is currently not fit for purpose, it is outdated. A transaction could fall within a number of provisions. Stamp duty should be applicable on specifically designed instruments or based on underlying transactions (rather than instruments) to tackle avoidance. • The old Act should be repealed and a new act should be enacted to specify the specific instruments that will be stamped and the rate of the duty. | <p>Currently the cost of administering the Act is higher than the benefit. There is also breach of law with regards to the CBN circular on Stamp duty which could lead to cash refund to depositors based on court judgments or refund to State Governments. A more efficient mechanism for taxing consumption is through VAT</p> |
| 9. | <p>Capital Gains Tax</p> <p>(CGTA)</p> | <ul style="list-style-type: none"> • The law should allow for the deduction of capital losses given that all chargeable gains (except for shares) are subject to CGT. | <ul style="list-style-type: none"> - Fairness in taxing only the aggregate gain. |
| 10. | <p>Rate of corporate taxation</p> <p>on income under PPTA and/or DOIBPSA.</p> <p>(Section 11 (2)d of PPTA and Section of 3 of</p> | <ul style="list-style-type: none"> • Insert a section in the DOIBPSCA on the rate of tax for income derived from gas projects carried out under a production sharing contract. | <ul style="list-style-type: none"> • To make it clear that deep offshore gas projects will not be prejudiced through taxation. |

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| | DOIBPSCA) | | |
| 11. | Definition of income incidental to petroleum operations. (Section 9 of PPTA) | <ul style="list-style-type: none"> • This provision should be more clearly defined | To avoid uncertainty. |
| 12. | Withholding tax on dividend declared by a company engaged in exclusive gas utilization Projects. (Section 60 and 11(2) of PPTA and 80 and 9(1) of CITA) | <ul style="list-style-type: none"> • Make section on gas income taxability in PPTA more robust; to speak to applicability of gas profits on CITA concepts such as commencement, excess dividend tax and other non-PPT provisions. | <ul style="list-style-type: none"> • Avoids uncertainty |
| 13. | The taxation of Farm in and Farm out arrangement- Taxed under PPT or CGT | <ul style="list-style-type: none"> • Introduction of a specific provision that relates to these arrangements. | <ul style="list-style-type: none"> • There is no provision of the law that relates to these arrangement |
| 14. | Restriction of capital allowances claim | <ul style="list-style-type: none"> • Remove the requirement to deduct 170% of Petroleum Investment Allowance or allow oil and gas companies to claim capital allowances at the same rate for depreciation | - The requirement discourages additional investment. |
| 15. | Holding Companies | <p>There should a preferential regime for holding companies which exempts them from minimum tax, excess dividend tax (EDT), WHT on intra group transactions, VAT on intra group transactions. A Nigerian headquartered company could easily pay tax at 51% of its profits simply because of the impact of EDT.</p> <p>There will be need to introduce rules to mitigate tax evasion from the proposed favourable regime e.g. participation exemption, substance and beneficial ownership rules</p> | <ul style="list-style-type: none"> • Make Nigeria a regional hub/gateway for investment expansion in west Africa and even Africa • Encourage retention of capital investment in Nigeria versus capital flight to tax havens/countries with preferential tax regimes • Encourage competitiveness of Nigerian headquartered companies by minimizing incidence of double taxation |

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| 16. | Real Estate Investment Trusts | <ul style="list-style-type: none"> • Nigeria currently has no legislation or regulation that specifically deals with the taxation of Real Estate Investment Trusts (REITs). Hence, there is no clarity of tax treatment of REITs. • In other climes, a REIT is seen as a transparent or flow through entity that is not different and separate from its unit holders/investors. Hence, the income of the REIT is treated as the income of the unit holders or investors and therefore taxed at that level. However, this is not the case in Nigeria based on the current income tax laws and its interpretation by the FIRS | <ul style="list-style-type: none"> • Specific REIT legislation must be enacted rather than using a combination of corporate income tax law, Investment and Securities law as well as trust law to determine the correct (and often unfavourable) treatment for REITS. The current situation encourages non-compliance with the current law and is a disincentive to investment in sector that has clearly generated significant benefits in other jurisdictions. |
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