TAX LAWS AND REGULATIONS

One of the simplest definitions of a tax I have come across is the one offered by the New Webster Dictionary of the English Language. It describes 'tax' simply as a charge imposed by governmental authority upon property, individuals, or transactions to raise money for public purposes. The definition is however imperfect. We have, in Nigeria, examples of tax imposed primarily on groups, rather than individuals. For instance, section 1 of the Personal Income Tax (PITA) contemplates the imposition of tax on communities and families, although such is rare in practice. Also, a tax may have objectives other than public revenue generation.

Generally, tax is assessed in accordance with some reasonable rule of apportionment on persons or property within the tax jurisdiction. However, the benefits of the contribution are not necessarily to be enjoyed contemporaneously or proportionately to contributions by individuals. You cannot sue government for not spending enough tax money in your locality, even when you pay more tax than others. Government's power of imposition is not dependent on the conferment of benefit, but is essentially an exercise of sovereign power.

General Outline of the Nigerian Tax System

As already noted, Nigerian tax law is purely statutory. The tax system thus features a wide range of statutes by which the various governments in the country seek to charge and collect revenue for public expenditure. Of these, the most widely based are on income taxation. The **Personal Income Tax Act** makes provisions for the country. Liability to personal income tax in Nigeria does not depend on the domicile or nationality of the taxpayer. Profits arising from a trade, business, profession or vocation, from any source inside or outside Nigeria, are chargeable here if the taxpayer happens to be resident in Nigeria. Foreign residents are also taxable here if they have income arising from a Nigerian Source.

Once a company is incorporated, it becomes a legal entity and is treated under Nigerian law as an artificial person, separate and distinct from its shareholders. Corporate bodies are charged to tax under the **Companies Income Tax Act.** However, while Nigerian companies are taxed on their worldwide income, foreign companies are liable only as regards the portion of their profits, which is attributable to business operations carried on in Nigeria. In addition to the company's income tax, all incorporated companies are required to pay 2% of their assessable profit into an Education Tax Fund. This is charged by virtue of the **Education Tax Act.**

Where a particular income or profit is chargeable to tax in Nigeria as well as in another country, there is a possibility of the tax payer getting double taxation relief by way of tax credit under the provisions of the income tax statues. To this end, the Federal Government of Nigeria has negotiated and signed income tax treaties with a few foreign governments. The statues also feature a wide array of tax holidays and exemptions, which are intended to boost investment. For instance, the **Industrial Development (Income Tax Relief) Act** makes provisions for the grant of tax relief to pioneer companies. The pioneer status is granted mainly to companies in any industry which in the opinion of the National Council of Ministers, is not being carried on in Nigeria on a scale suitable to the economic requirements of the country. Also, a company which has incurred an expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an **Export Processing Zone** is granted 100% capital allowance in any year of assessment. This makes the cost of capital acquisition entirely deductible in the year in which the qualifying expenditure was incurred. Another example is in Part 1V of the **Minerals & Mining Decree**, (now Act) which gives various tax incentives to operators in the solid minerals mining sector.

Exclusively, the Federal Government imposes both personal and company income taxes. The same government also collects companies' tax, but it partly delegates the power to collect personal income tax to state governments. In normal case, personal income tax is thus collected and expended by the state in which the taxpayer is deemed resident in the relevant year of assessment. However, men of the Nigerian armed forces, officers of the foreign-service, persons resident in the Federal Capital Territory and non-residents pay to the Federal government.

Nigeria ranks among the major oil producing countries of the world and much of its public revenue is generated from the sale of crude oil and natural gas. All petroleum resources belong to the Federal government, hence, companies engaged in petroleum operations are charged to tax under a special legislation, the **Petroleum Profits Tax Act** (PPTA). The effect of the Act is however varied by a Memorandum of Understanding (MOU) between the oil producing companies and the Federal Government of Nigeria. Any profit, which is charged to petroleum tax, is exempted from companies' income tax.

Until 1967, there was no tax on capital or capital gains in Nigeria. In that year however, capital gains taxation was introduced. The Capital Gains Tax Act, which was enacted for that purpose, was a virtual copy of its English counterpart. It has been retained ever since with only a few amendments. The Act charges to tax any capital gain accruing to individuals and corporate bodies whenever they dispose of assets. The Federal Government has the excusive authority to tax capital gains but the collection has been partially delegated to States. While corporate bodies pay capital gains tax to the Federal Board of Inland Revenue, others pay to the tax authorities in their States of residence. Inheritance tax, which was levied of the Capital Transfer Tax Act, was scrapped in 1996.

Before 1993, Nigeria had a limited form of sales tax, but it has since adopted a very widely based value added tax. By virtue of the **Value Added Tax Act** of 1993, all purchasers of chargeable goods and services are expected to pay 5% of the purchase price as tax. The Value Added Tax Act is a federal is a federal statute and the tax is administered by the Federal Inland Revenue Service (an arm of the Federal Board of Inland Revenue) on behalf of the Federal, State and Local Governments. The proceeds are shared among the three tiers of government in accordance with a formula determined from time to time by the federal legislature.

Apart from VAT, there is also the Sales Tax, which is provided for in the statute books of many states. The sales Tax was presumed dead at the advent of the Vat Decree, but Lagos State recently resuscitated its own when it amended the schedule to the **Sales Tax Law** and showed an intention to commence the collection of the tax. This aroused the interesting issue of which government has the constitutional authority to tax sales transactions within a state.

Another major source of revenue for the Federal Government is customs duty, which is payable by importers of specified goods. This tax is charged solely by the Federal Government and collected through the Nigeria Custom Service. Excise duty was levied on a variety of locally produced goods until 19998 when the tax was abolished. It was however partially reintroduced, with effect from January 1, 199. The applicable law for customs and excise is the **Customs and Excise Management Act.**

The **stamp Duties Act** imposes tax on a wide range of documents and transactions. Where one of the parties is a corporate body, the tax is payable to the Federal Board of Inland Revenue. Others pay to the State tax authorities

Apart from those outlined above, there are sundry levies and rates which local governments are authorized to collect. Notable here is the tenement rate payable annually on buildings situated within a particular local government area. This is levied by virtue of the Tenement Rate Law of the various states. There is also a Development levy payable at a flat rate of N 100 by individuals to state governments. When real property is transferred, the relevant state government imposes some charges before the Governor grants his consent in accordance with the **Land Use Act** of 1978.

It can be seen from this short survey that the Nigerian Tax system features a mixture of direct and indirect taxes. All individuals, groups and corporate bodies that earn income, profits or gains, are affected. Except for tenement rates payable on buildings, there is no tax on the ownership of capital assets per se. Capital gains tax is charged only when these assets are disposed of at a profit. Virtually all the major taxes are within the exclusive legislative jurisdiction of the Federal government, but the power to collect taxes from corporate bodies while states are allowed to collect from individuals and unincorporated groups. Even though local governments authorities do not have substantive legislative powers, they charge and collect such rates and levies as may be authorized by statue of the relevant State government.

Culled from CITN: Nigerian Tax Guide and Statutes.

For more information contact The chartered Institute of Taxation of Nigeria.