Advances in Politics and Economics
ISSN 2576-1382 (Print) ISSN 2576-1390 (Online)
Vol. 7, No. 3, 2024
www.scholink.org/ojs/index.php/ape

Original Paper

A Legal Evaluation of Companies Income Tax Under the Nigerian Tax Regime

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Received: May 03, 2024 Accepted: June 23, 2024 Online Published: July 19, 2024

doi:10.22158/ape.v7n2p23 URL: http://dx.doi.org/10.22158/ape.v7n2p23

Abstract

The paper examined the legal evaluation of Companies Income Tax (CIT), its Practice, Enforcement and Effects in Nigeria. The conceptual clarification of the key concepts were considered and a comprehensive introduction of the companies income tax practice in Nigeria was reiterated. Amongst the key terms considered were company, income, tax and companies income tax respectively. It highlighted the legal history and imposition of companies income tax in Nigeria, prior, during and postcolonial era until the present day legal regime. In the same vein, administration of companies income tax in Nigeria was critically evaluated, including the classification of companies income tax, taxable companies and taxable profits respectively. Furthermore, the paper emphasized on the enforcement of companies income tax in Nigeria and elucidated on the importance and challenges of enforcement of companies income tax in Nigeria, which includes tax evasion and under declaration of income and profits in order to reduce amount of taxable profits. The paper was summarized with a conclusion.

Keywords

Company, Income, Tax, Evaluation, Nigeria

1. Introduction

Tax and taxation is one of the major source of government revenue. Like every other country, Nigeria has the responsibility not to only protect its citizens but also to provide human capital development through quality education, ensure infrastructural development, industrialization, healthy environment and quality health care. The whole essence of the good governance we crave for is the improvement of the welfare of the of the citizens. This is carried out with resources raised through taxation. In order words, taxes build capacity, legitimacy and consent. (Note 1) Taxation is indeed a very pivotal part of citizens' obligation to every government that every responsible citizen must comply with. Payment of tax or imposition of tax was provided in the *grund norm* to wit; it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly. (Note 2) The foregoing provisions of the Constitution made tax payment mandatory for every citizen of the Federal Republic of Nigeria including corporate personalities.

In the same vein, every corporate organization incorporated in Nigeria under the Companies and Allied Matters Act 2020, are expected to pay her tax for each year of assessment. The tax payable shall be at the rate specified in subsection (1) of section 40 of the Act. (Note 3) Upon the profits of any company accruing in, derived from, brought into or received in Nigeria in respect of (Note 4) …. It must be observed that various companies are identifiable by their incorporation numbers. The companies are required under CITA to display its incorporation numbers on its business, transaction with other companies and individuals, including documents statements, returns, audited account and correspondence with revenue authorities and government agencies. (Note 5) The administration of the companies' income tax in Nigeria is vested on the Federal Inland Revenue Service. (Note 6)

Similarly, it has been statutorily provided that; for the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organization, the service may give notice to that person, body corporate or organization…. (Note 7) Sadly, despite the existence of regulation on companies income tax in Nigeria, the Nigerian state still experience low compliance in tax payment which has become a matter of grave concern to the government because it limits the capacity of the state to raise revenue for development purposes. (Note 8)

Although tax administration is a bit difficult task, however because of its pivotal nature, studies of this kind to evaluate the effectiveness and challenges faced by agencies charged with the responsibility of the tax collection is necessary. This paper intends to interrogate this subject as to identify the possible bane to compliance and enforcement of tax regulation, especially as it relates to company income tax. Many companies in Nigeria want to stay afloat and employ all kinds of strategies that will benefit them, some of them to evade tax and others avoid tax.

2. Conceptual Clarifications of Key Terms

2.1 Company

A company can be defined as "an association of persons formed for the purpose of an undertaking or business carried on in the name of the association. (Note 9) By the provisions of CAMA, a company is a legal entity or person separate and distinct from its members (owners) who came together with a common goal or objectives. (Note 10) A company is a legal entity formed by a group of individuals to engage in and operate a business (commercial or industrial) enterprise. (Note 11) A company is a natural legal entity formed by the association and group of people to work towards achieving a common objective. It can also be seen as a registered association which is an artificial legal person, having an independent legal entity with perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability. (Note 12)

A company is a legal entity formed by a group of individuals to engage in and operate a business, commercial or industrial enterprise. A company may be organized in various ways for tax and financial liability purposes, depending on the corporate law of its jurisdiction. (Note 13) It can also be said to mean a form business structure that is a separate legal entity from its owners. It's a complex business structure, with higher set-up and administrative costs because of extra reporting requirements and higher level legal obligation. (Note 14) In-line with the foregoing definitions, a company can be defined as a registered, corporate, legal entity distinct from its members and formed by a group of individual with the aim of achieving a common goal or objectives.

2.2 Income

The term income can be defined as the amount of money received in exchange for products or services. Income can also be expressed in terms of property and other valuable transfers received as a payment for products; as a compensation for services provided; as returns on investment; as gifts; as pension distribution; as dividends; and as more, over a set period of time. (Note 15) Income is money received by an individual or business for providing services, labour, producing goods or services or investing capital. An individual earn income through wages or salary while in business income can be earned from selling goods or services provided in the cost of their production. (Note 16)

"The word income does not have specific meaning of definition. It can be seen as cash or cash equivalents, earned either for work done, interest or profit from capital invested, or rent from property or land that is let. (Note 17) Economist define income as the total sum of earning of government consumption-unit that can be separate during particular period and still have same net assets valve in money terms at the end of the period as the beginning of the period (Note 18) in accounting, it is seen as an excess of revenue over expense for a specific accounting period. It can also refer to how much total assets increased in value by during an accounting period. (Note 19) From the definitions above, it can be deduced that income can be defined as money that people receive for the work they do either as a salary, wage or revenue.

2.3 Tax

Tax is a mandatory contribution levied on individuals or corporations by a government entity be it local state or national. These contributions are used to finance government activities like road construction, schools, social security and medical care. (Note 20) Tax is also defined as a mandatory payment or charge collected by the government from individuals or businesses to cover the cost of general government services, goods and activities. (Note 21) Tax is a mandatory fee or financial charge levied by any government on an individual or an organization to collect revenue for public works providing the best facilities and infrastructure. (Note 22) Tax is also the money paid to the government based on a person's income, a company's profits, the value of goods and services. (Note 23) Tax is a compulsory levy payable by an economic unit to the government, without any corresponding entitlement to receive a definite and direct *quid-pro-quo* from the government. (Note 24) Going by the definitions above, one can say that taxes are levies paid by individuals, groups, business or corporate bodies by constituted authorities for raising funds used by the state in the maintenance of peace, economic growth and development and social engineering for the benefit of the citizenry.

2.4 Company Income Tax

Company income tax is a tax imposed on the profits made by a company. (Note 25) company income tax is a tax levied on the profits earned by companies or corporation. (Note 26) This tax is paid by all companies incorporated in Nigeria. Companies income tax is a tax chargeable on all resident and non-resident companies (except those engaged in petroleum operation) incorporated in Nigeria. (Note 27) It is expected that companies are subject to tax. The income profit is accrued from all sources and after deduction has been made and tax imposed upon such profits.

A company income tax is a tax on the profits of a company. These are paid on a company's taxable income, which includes revenue minus cost of goods sold, general and administrative expenses, selling and marketing, research and development, depreciation and other operating cost. (Note 28) It can also be said to be a levy by the state and federal governments on business profits. Many companies are not subject to this tax because they are taxed as pass-through businesses, with income reportable under the individual income tax. (Note 29) Similarly, company income tax (CTI) is the levy imposed on the profit of all registered companies in Nigeria. This tax also applies to foreign entities who carry out business activities in Nigeria. Companies resident in Nigeria are expected to pay the CIT on income received whether in Nigeria or another country. While foreign companies which carry out any business in Nigeria are expected to pay CIT on the income received in Nigeria. (Note 30)

3. Legal History and Imposition of Companies Income Tax in Nigeria

The first legislative enactment on company's income tax in Nigeria was introduced in 1939 through the instrumentality of the Companies Income Ordinance. (Note 31) Prior to this enactment and its operation, the regulation of personal and business taxation was vested in one and same legal regime. (Note 32) The Companies Income Tax Ordinance vested administration of the tax in a commissioner to be appointed for that purpose by the Governor and the proceeds from the tax were to be remitted to the government treasury to form part of the general revenue of Nigeria. (Note 33) This ordinance was however found to be ineffective as it failed to bring individuals into tax net. Due to this weakness, the Companies Income Ordinance 1939 was repealed a year after its passage by the Income Tax Ordinance 1940, (Note 34) the ordinance regulated personal and business taxation and carried on for 21 years when the second separate enactment on companies income tax was again enacted (Note 35)

Similarly, another law aimed at the exclusive taxation of companies' income was enacted in 1961. This was the Companies Income Act No. 22 1961, which was a landmark legislation, first because from the date it came into force, the provisions of the Income Tax Ordinance (Note 36) and the Income Tax Administration Ordinance (Note 37) together with all rules made thereunder ceased to have effect with respect to companies income tax. (Note 38) Secondly, the Act established the Federal Board Revenue as statutory body and vested it with the power to administer companies income tax as well as all federal taxes. (Note 39)

Tax on the income of companies was imposed by section 17 in respect of profit accruing in, received in Nigeria from: Any trade or business; rent or any premium arising from a right granted to any other person for the use or occupation of any property, Dividends interest, discount charges or amenities. Any other amount not falling within the above categories but qualifying as annual profits or gains or any amount deemed to be income or profits under the Act or arising from a person or provident fund under the Income Tax Management Act 1961 (Note 40)

It is important to reiterate that the Companies Income Tax Act 1961 was in force until 1979 when it was repealed by the Companies Income Tax Act no 28 1979. (Note 41) The 1961 Act during its 18 years of operation underwent series of amendments, new section 30A was introduced in 1967, which empowered the Federal Board of Inland Revenue to assess and change a company on fair and reasonable percentage turnover of its business within and outside Nigeria in the case of residents companies and non-Nigerian company …. (Note 42) Several amendments have been carried out until in 2007, the Companies Income Tax Act 1979, was further amended by the Companies Income Tax (Amendment) Act (Note 43) to reflect some of the recommendation of the 2002 study group. The following changes were *inter alia* introduced:

Section 1 to 8 of the Principal Act relating to the establishment, powers and proceeding of the Federal Board of Inland Revenue have been repealed by section 2(1) of the 2007 amendment Act. The repeal is consistent with establishment of the Federal Inland Revenue Service as the successor to Federal Board of Inland Revenue (FBIR). Section 4 of the 2007 Amendment Act requires an insurance company that engages the service of an insurance agent, loss adjuster or broker to include a schedule in its annual returns showing details of name, address, duration of employment and payments made to such agent, adjuster or broker. Section 5 of the Amendment Act exempts profits of companies operating in export processing zone (EPZ) or free trade zones from tax under the Act, 100 percent of the company's production is for export otherwise proportionate tax is payable on local sales. Section 14 of the amendment repealed section 56 of the principal Act which provide for one percent bonus of payable tax to a company that filed its return within the stipulated time. The fine payable as a general penalty has been increased from 200 naira to 20,000 naira, while the fine payable for failure to finish statement or keep records has been increased from 40 naira to 200 naira. The power to vary or revoke the rate of companies income tax earlier vested in the president by section 100 is now in the national assembly….(Note 44)

4. Administration of Companies Income Tax in Nigeria

Taxation is seen as a burden which every citizen must bear to sustain his or her government because the government has certain responsibilities to perform for the benefit of those it governs. (Note 45) Taxation is the most important source of government revenue and two categories of tax payers exist in every economy. The individual and corporate tax payers. (Note 46) The Board of Inland Revenue has the power and authority to assess the assessable profit in every financial year of the company carrying out business in Nigeria. (Note 47)

Tax administration is the process of assessing and collecting taxes from individuals and companies by relevant tax authorities, in such a way that current amount accessed is collected efficiently and effectively with minimum tax avoidance or tax evasion. (Note 48) The administration of companies' income tax is vested on the Federal Board of Inland Revenue (FBIR), it is thus responsible for its care and management. (Note 49) Federal Board of Inland Revenue is also referred to as the "Board" which has its operational arm known as the Federal Inland Revenue Service (FIRS) also known as the "service". (Note 48) The service is statutorily assigned for collecting, accounting for all revenue made from companies income tax. The Federal Board of Inland Revenue through its operational arm, the Federal Inland Revenue Service, deals with corporate bodies as well as personal income tax for certain categories of individuals. (Note 49)

It is important to emphasis that companies' income tax is imposed on the income of all companies operating in Nigeria, except those specifically exempted under the Companies Income Tax Act. Companies are the taxed the rate of 30% of the income tax imposed on. (Note 50) No doubt, firms in most cases finance their investment with borrowed funds, as long as the rate charged on borrowed funds. (Note 51) Firms would always like to add to their existing capital being equal to that rate of discount which would make the present value of the series of annuities given by the returns expected from the capital assets during its life just equal to the supply price. (Note 52)

Note importantly that based on the provision of the section 40 subsection (1) of the Act, (Note 53) the Service calculates the amount of tax payable by a company by bringing the company's audited accounts. (Note 54) The audited accounts will be adjusted to arrive at taxable profit to which a tax rate is 30% will be applied for income tax and 2% will be applied for education tax. (Note 55) The overall supervisory authority on the matters of companies' income tax, assessment, collection and related issues thereto is the Minister of finance.

5. Classification of Companies Income Tax

Companies Income Tax are classified into three segments, the self-assessment of tax, the currency of assessment and minimum tax.

Safe Assessment of Tax Payable: This is the system of assessing where a company is allowed or permitted by the relevant tax authority to pay estimated company's chargeable income tax in that year of assessment by installment. (Note 56) Statutorily, this method of assessment is provided for under the

Companies Income Tax Act, to wit. Every company filing a return under section 58 of this Act or requested by notice of the Board to file a return under section 59 of this Act shall, in the return, compute the tax payable by the company for the year assessment and forward with tax return, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax. (Note 57)

The foregoing presupposes that each company operating in Nigeria, must for the purposes of payment of the company's income tax file its return, which should cover all the transactions carried out by the company during the year of assessment. The said return ought to compute the amount of tax payable by the company from its profits and evidence of compliance.

The Currency of Assessment: This makes provision for the currency of assessment of tax payable by a company. The Act, (Note 58) reiterates that notwithstanding anything to the contrary in any law, an income tax assessment under sections 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected. (Note 59) The implication is that company's income tax assessment from where the amount payable by the percentage stipulated by law is determined must be calculated in the currency used for the transaction giving rise to the income tax.

The Minimum Tax: This is tax payable and calculated as 0.5 percent of the gross turnover less franked investment income. Statutorily, minimum tax is provided under the Act (Note 60) to wit, notwithstanding any other provisions in this Act where any year assessment, the ascertainment of total assessable profits from all sources of a company results in a loss or where a company's ascertained total profits results in no tax payable or tax payable which is less minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection 2 of this section. (Note 61)

"The foregoing implies that where at the end of a financial year the company is assessed and it is ascertained that instead of profits, it rather ran into losses, the company under the Companies Income Tax Act is not exempted from its tax obligation. It shall rather be obliged to pay the minimum tax prescribed under the Companies Income Act.

6. Taxable Companies and Profits

It is important to emphases that taxes are charged on Nigeria companies, that is, companies incorporated in Nigeria under Companies and Allied Matters Act, 2020. Foreign companies doing business in Nigeria and earning profits or Nigerian companies carrying out business outside the territory of Nigeria, though resident within the Nigerian territory. Any of such companies is under legal obligation to file returns as and when due and to discharge their legal duty of tax ascertainment, computation and payment.

Statutorily, the profits of the Nigerian Company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria. (Note 62) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigerian, if that company has fixed base in Nigeria to the extent that the profit is attributable to the fixed based. (Note 63) For the purpose of subsection (2)(a) of this section a fixed base shall not include facilities used solely for the storage or display of goods or merchandise or collection of information. (Bote 64) No doubt, shipping and air transportation companies whether or not incorporated in Nigeria, provided that its profits or loss are deemed to be derived from Nigeria are under obligation to pay Companies Income Tax. (Note 65) Insurance companies whether proprietary or mutual other than a life insurance company are under the obligation of CIT payment. It does not matter whither its profits or part of it are made from Nigeria or outside Nigeria…. (Note 66) It must be observed that where a Nigerian based insurance company from the foregoing reinsures with a foreign insurance company the two companies are under tax obligation in Nigeria, because the foreign based insurance company is making profit out of the reinsurance. Statutorily, taxes are charged on rent, premium, dividends, interest, royalties or any other source of annual profits or gains or from acquisition and disposal of short term money instruments like federal government securities, treasury bills as the case may be. (Note 67) in computation of tax after arriving at the adjusted profits, there is need to compute the taxable profit. In doing this effectively, the capital and losses are to be subtracted, leaving the value derived as the taxable profit. Having arrived at that, the relevant tax rate provided for under section 40 of the Act (Note 68) can be applied.

7. Enforcement of Companies Income Tax in Nigeria

It has been argued that the facts there exist provisions under the Companies Income Tax Act with tax imposition is not sufficient. Strict enforcement of the regulation is more pivotal. (Note 69) The Federal Inland Revenue Service reveals that about 30 percent of companies in Nigeria are involved in tax evasion and also 25 percent of registered companies in the country are not paying tax. (Note 70) Statutorily, the taxation system established under the Act (Note 71) is achievable and effective, but for some certain inadequacies. In practice the FIRS has had to contend with the Nigerian factors of enforcement problems, computation and evasion. (Note 72) The Act (Note 73) in its provision has made available to the FBIR, a manageable system of tax collection. Regrettably however, the typical Nigeria taxpayer often opts to negotiate with corrupt staff in return for some gratification and pay a minimal sum to offer of the government. (Note 74)

Section 26 of the FIRS Act provides for enforcement of tax generally and specifically made it an offence for any person, whether individual or corporate personality to contravene the provisions of the Act such person shall in respect of each offence be liable on conviction to a fine equivalent to 100 percent of the amount of the tax liability (Note 75). In same vein any person who being obliged to deduct any tax under section 78, 79, 80 or 81 of this Act fails to deduct or having deducted fails to pay to the Board within twenty one days from the date the amount was deducted or the time the duty to deduct arose shall be guilty of an offence and shall be liable to 100 percent penalty.... (Note 76) tax may be sued for and recovered in a court of competent jurisdiction at which payment should be made…. Note also, that any person guilty of offence for contravening this Act or failure to comply shall be liable on conviction to a fine of N20,000 naira… no prosecution of in respect of an offence under section 93,94 or 95 may be commenced except at the instance of or with the sanction of the Board.

The community assessment of the tax provisions of the Act in respect to enforcement evidences that the Act simply defined offences and penalties attach therein, but fails to provide machinery for detection of offenders. A well-functioning body of tax investigation is essential for detection and prosecution of cases of fraud and evasions (Note 77). The lack of sufficient capacities in tax administrations reduce the probability of detection that influences the decision of a tax payer as to whether to evade or not. In addition, the legal framework is an important prerequisite for any enforcement activity. For example, the size and nature of penalties that are incurred after evasion have been detected is directly connected to the level of tax compliance (Note 78)

Finally, on this point, it is revealed that the Act gives a lot of room for tax evasion and many companies have exploited it to their own advantage. The FIRS ought to have put in place a machinery to check, confirm and certify the information supplied by companies on their audited account and statement claim.

8. Conclusion

Companies Income Tax is not the only tax applicable to companies in Nigeria. The Companies Income Tax Act (CITA) is the principal law that regulates the taxation of companies in Nigeria. The tax regime in Nigeria is multi- level tax system, which implies that taxation is administered by the three tiers of government; (i) the Federal Government, (ii) State Government and (iii) Local government respectively. It emphasized that Companies Income Tax (CIT) is a tax on the profits of registered companies in Nigeria. It also includes the tax on the profits of foreign companies carrying on any business in Nigeria. It is usually paid by limited liability companies and public limited liability companies. Whereas, resident companies are liable to corporate income tax (CIT) on their worldwide income, while non-residents are subject to CIT on their Nigeria-source income. Corporate income tax is based on declared profits.

The Federal Inland Revenue Service as a major agency vested with the administration of company income tax in Nigeria, may seriously consider, among other things, to create an enabling environment by putting in place suitable policies, regulation and legal framework to create awareness on the needs for tax payers to perform their constitutional responsibility, so that the government can also provide them with the developmental projects that ought to be financed through income from taxation and also reduce tax evasion and avoidance to the barest minimum, towards the common good of the state and overall interest of the entire citizenry.

Notes

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