NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

LAGOS, NIGERIA

COLLOQUIM ON THE TAX PAYERS MONEY

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COMMUNIQUE

INTRODUCTION

Taxation is the process of collecting taxes within a particular jurisdiction, while tax is defined as a compulsory levy imposed by the government on the incomes, profits, goods, services or properties of individuals, corporate entities, trusts and settlement.

Tax can also be defined as the enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of Government and for all public needs. Tax policy on the other hand, seeks to provide a set of guidelines, rules and modus operandi that would regulate a tax system and provide a basis for tax legislation and tax administration.

The Nigerian tax system is basically structured as a tool for revenue collection that is why modern Nigeria tax takes the form of a pecuniary burden. The tax charge is usually on the income or gains of the taxpayer but sometimes it is on expenditure.

Nigeria's tax system is plagued by several problems which have not been adequately tackled for many years. One of the reasons for this neglect is Government's heavy reliance on revenues derived from oil, as a result of which little or no attention had been given to revenue from other sources such as taxation. However, there is now a renewed commitment by the Federal Government to diversify the economy by growing the non-oil tax revenue in order to develop a stable and sustainable revenue source to finance developmental projects.

Taxation influences investment and the economy through the amount of money that can be spent, earned or saved. Taxable individuals and corporate bodies, who are able to pay tax, sometimes evade tax as a show of apathy to the decay in infrastructure and services provided by Government. This in turn affects government viability and investment decisions. Therefore, an understanding of the tax system is necessary to identify tax related issues in operations, financing and investment decision making processes.

In consideration of the foregoing, the Nigerian Institute of Advanced Legal Studies as part of its activities as the flagship think-tank institution in Nigeria, held a One Day Colloquium on The Taxpayers Money. The perspectives for the Colloquium include:

The Value of Tax Policy in Dealing with Wealth/income Distribution in Nigeria; Tax payers Money: Abuse and Misuse; Taxation and Corporate Social Responsibility; The Role of the Federal Inland Revenue Service (FIRS) in Monitoring Investment,

Revenue Allocation and Internally Generated Revenue; Tax Evasion and Tax Avoidance, and Federalism and Taxation.

The Colloquium was chaired by Mr. Ade Ipaye, Special Adviser to the Governor of Lagos State, on Taxation and Revenue while the Key Note Speech was delivered by Mrs. Ifueko Omoigui Okauru, Executive Chairman, and Federal Inland Revenue Service (FIRS). Also in attendance were renowned professors, law researchers, tax practitioners, accountants, consultants, members of the press and the general public.

OBSERVATIONS

The Colloquium made the following observations:

1. The government of Nigeria, like others in different parts of the world has legislative powers to impose on its citizens any form of tax and at whatever rate it deems appropriate. Such taxes when collected, are used to execute government functions like provision of infrastructure, maintenance of law and order, health and education of the citizens and as well as a fiscal tools for controlling the

2. The objectives of the Nigerian Tax System include:

- To promote fiscal responsibility and accountability.
- To facilitate economic growth and development.
- To provide the government with stable resources for the provision of public goods and services.
- To provide economic stabilization.
- To pursue fairness and equity.
- To address inequalities in income/wealth distribution.

3. Taxes may be direct or indirect and may be imposed on individual basis, on entities, on assets and on transactional basis as follows:

A. On Individuals

- Personal Income Tax- Imposed on the income of all Nigerian citizens or residents who derive income in Nigeria and outside Nigeria.
- Development Levy- a flat charge imposed on every person typically within a State.

B. On Companies (Corporate Entities)

- Companies Income Tax- imposed on the profits of all corporate entities who are registered in Nigeria or derive income from Nigeria, other than those engaged in petroleum operations.
- Petroleum Profit Tax- imposed on the profits of all corporate entities registered in Nigeria or who derive income from oil and gas operations in Nigeria.
- Education Tax- imposed on all corporate entities registered in Nigeria.
- Technology Levy- imposed on selected corporate entities (telecommunication companies, internet service providers, pension managers, banks, insurance companies and other financial institutions within a specified (turnover range) in Nigeria to support nationwide development of technology infrastructure and capacity.

C. On Transactions

- Value Added Tax- imposed on the net sales value of non-exempt, qualifying goods and services in Nigeria
- Capital Gains Tax- imposed on capital gains derived from sale or disposal of chargeable assets.
- Stamp Duty- imposed on instruments executed by individual and corporate entities in Nigeria.
- Excise Duty- imposed on the manufacture of goods within the territorial Sovereignty territory. Collected by the Nigerian Customs Service.
- Import Duty- imposed on the export of goods outside the territorial sovereignty. Collected by the Nigeria Customs Service.
- Export Duty- imposed on the import of goods out of territorial sovereignty. Collected by the Nigeria Customs Service.

D. On Assets

This includes taxes such as property tax and other such taxes imposed on landed property.

4. The decision to reform and develop a National Tax Policy could be traced back to the structure of the former tax system and some of its inherent problems which include:

- The increased demand to grow internally generated revenue, which has led to the exercise of the powers of fixation to the detriment of the taxpayers who suffer multiple taxation and bear a higher burden than anticipated. Insufficient information available to taxpayers on tax compliance requirements, which created uncertainty and room for leakages in the tax system.
- Multiple taxation by Government at all levels, which impacted negatively on the investment climate in Nigeria. Elimination of multiple taxation is therefore a major concern at all levels of Government.
- Lack of accountability for tax revenue and its expenditure.

- Lack of clarity on taxation powers of each level of government/encroachment on the powers of one level/State by another.
- Lack of skilled manpower and inadequate funding, which led to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance.
- Use of aggressive and unorthodox methods for tax collection.
- The non-review of tax legislation, which led to obsolete laws that do not reflect Nigeria's current realities.
- The lack of a specific policy direction for tax matters in Nigeria and the absence of laid down procedural guidelines for the operation of the various tax authorities.
- The global financial recession, which made it imperative for the government to seek alternative source of revenue to finance her expenditure.
- Some companies conceal earnings in order to evade tax.

5. The purpose of taxation is to raise money for activities which cannot be pursued without government action. These include the public contribution to economic investment, as well as enabling people to meet their basic needs and enjoy wider opportunities. Without taxation we cannot create a better society. Even when people say they are willing to pay higher taxes for better schools, they will only do so if the school and the hospitals provide value for their money.

6. Government is not and cannot be the only source of investment but its decisions about tax policy can have a major impact on the balance of the economy. Although private capital has an important role to play in securing the public infrastructure on which a successful economy depends, it can fulfill this role only if government takes a lead.

7. By the provisions of the Companies Income Tax Act (CITA), for the purposes of ascertaining the profits or loss of any company for any period from any source chargeable with tax under the Act, the amount of any donations made for that period by that company to any fund, body or institution in Nigeria is deductible. As a result of this provision, the Niger Delta Development Commission (NDDC) has complained that the oil companies have failed routinely to meet their statutory obligations of donating 3% of their turn over.

8. Where there is a pervasive perception of inequity in the revenue allocation process as is the case of Nigeria, this will impact negatively on the pattern of the expenditure. Consequently, there is a pressing need for equity in the extant revenue sharing formula of the Federation of Nigeria.

9. The disobedience to tax laws as a form of civil disobedience is as a result of the tax payers not seeing the evidence of what the tax payers money is used for, in terms of social and infrastructural development.

10. There should be no justifiable basis for taxation where the citizenry are alienated from the State due to lack of accountability; hence there should be no taxation without representation.

11. There are various power centers in an ideal federation. Consequently, there is a need to distribute taxing powers which is currently skewed in favor of the Federal Government.

RECOMMENDATIONS

At the end of the Colloquium, the following recommendations were made:

1. Government should transparently and judiciously account for the revenue it generates through taxation by investing in the provision of infrastructure and public goods and services. Where this is in place, Nigerians will have a system that they can fully relate to and which is a tool for national development.

2. The tax payer is more important than the tax. Tax payers should be seen as priorities and must be recognized as key. Hence, Tax payers should be invited by the elected legislators in their constituencies to find out their priorities. As we approach elections, this issue is apt and calls for the electorate to carefully vote for the right candidates not necessarily the parties.

3. The fiscal indiscipline, profligacy, culture of waste and the lack of maintenance culture characterizing the Nigerian must be addressed and completely eradicated.

4. The tax system should allow for stimulation of the economy and not stifle growth, as it is only through sustained economic growth that the potential ability to offer improvements in the well-being of Nigerians will arise. The tax system should therefore not discourage investment and the propensity to save. Taxes should not be a burden but should be applied proactively with other policy measures to stimulate economic growth and development.

5. Nigeria should use its tax system to minimize the negative impacts of volatile booms and recessions in the economy and also to help complement the efforts of monetary policy in order to achieve economic stability.

6. The Nigerian Tax System should recognize the ability-to-pay principle, in that individuals should be taxed according to their ability to bear the tax burden. Individuals and entities that earn high incomes should pay a corresponding high percentage of tax. The overall tax system should therefore be fair, so that similar cases are treated similarly.

7. Though it is easier to say that taxes should be fair than to make them so, Government should maintain the three aims of fair taxes which are: first, people in similar circumstances with similar incomes should pay similar amounts of tax (horizontal equity); second, people who are better off should pay a higher proportion of their income in taxes than people who are worse off (vertical equity) and thirdly no one should pay punitive level of taxation.

8. Taxation plays a major role in the development of a country, therefore, taxation should not just be studied in faculties of law, but should be included in every field of study/profession.

9. A good tax system in any country should be geared towards improving the lots of its citizenry. Tax payers are much more concerned with equitable wealth/income distribution. Nigeria's tax system should therefore, take cognizance of our peculiar economic circumstances and seek to narrow the gap between the highest and the lowest income groups. Those with the highest incomes should pay the highest percentage of tax and tax revenue should be utilized to provide Nigerians with affordable social amenities, basic infrastructure and other utilities.

10. The virtues of the communal public should be exploited with a view to enhancing the efficiency of Nigeria's tax system.

11. The infinite possibility of deploying taxation to curb environmental pollution particularly in the oil producing region should be explored.

12. The Federal Inland Revenue Service (FIRS) can promote investment flow through the following:

- Eradicating multiplicity of taxes;
- Improving the institutional capacity to administer taxes effectively;
- Continuous introduction and review of tax exemptions and incentives;
- Removal of payment of minimum tax; removal of tax on dividend;
- Reform of Capital Gains Tax Act;
- Minimizing the incidence of tax evasion and avoidance; accountability for tax revenue;
- Review of section 59 of the FIRS Establishment Act, 2007.

13. The connection between taxation and achievements should be as clear as possible. When people do not know where their contribution is going, it is hardly surprising that they object to paying more and more into the black hole of government.

14. A currency transaction tax should be levied as part of efforts to broaden the revenue base and also curb money laundering.

15. Where the state discharges the social contract in the breach, it lacks majesty, authority and legitimacy to levy taxes. Consequently, taxation in Nigeria at all tiers of government must be indexed to the robust discharge by the state of its duties under the social compact.

16. There is an urgent need to diversify the Nigerian economy away from the oil sector to the tradable non-oil sector (real sector) pursuant to broadening the revenue base.

17. A corollary of the need to diversify is the need for the Nigerian State to promote the generation of wealth for all citizens in the private sector.

18. As much as possible, the Nigerian State must avoid establishing tax regimes that would constitute disincentives to Foreign Direct Investments (FDIs) and private domestic investments.

19. Taxation in Nigeria must be situated within the larger core democratic ethos of rule of law, due process, good governance, accountability and transparency.

20. Taxes must be acceptable to the public. In a democracy, a tax which is unacceptable may infact bring down a government (or as the case in England with a parliamentary system).

19. Where any tier of government engages in a strictly commercial activity that of course negates the doctrine of inter-governmental immunity hence such activities should be taxable; or where such activities have direct nexus with the taxing state, it should be taxable by such State.

21. No State should use its tax laws to hinder interstate commerce. Such laws will be null and void to the extent that they hinder interstate commerce.

22. The citizenry should be sensitized by means of civic education on the importance of taxation to national development. Such process of socialization must also underscore the reciprocal duties of the state to judiciously manage revenues accruing from taxation.

23. The Freedom of Information Act must as a necessity be passed as a matter of utmost exigency as a precondition for enshrining transparency, and accountability in public finance and expenditure.

24. A call is made for the aggressive implementation of issues recommended in the National Tax Policy and this will certainly earn the continuous support of the citizens and non citizen, especially the tax payers, and further increase the revenue base of the government at all levels because tax evasion and avoidance will be considerably minimized.

25. Government should as a matter of policy make donations, gifts by corporations in pursuit of social responsibility allowable for tax purposes, that is to say expenses deductible before tax.

Lagos, Nigeria
19th January, 2011.

Signed:
Professor Epiphany Azinge, SAN
Director General