UDO UDOMA & BELO-OSAGIE

TAX ALERT:

Highlights of Events that Shaped the Nigerian Corporate Tax Landscape in 2018 and Keeping 2019 In View

In 2018, the revenue drive by all levels of the Nigerian government was intensified, with significant results. In January 2019, it was reported that the Federal Inland Revenue Service ("FIRS") generated NGN5.3 trillion in 2018 – the highest amount – in Naira terms - of tax collected by the body since 2012 when tax revenue was about NGN5.07 trillion. In 2017 and 2016 respectively, FIRS collected NGN4.027 trillion and NGN3.307 trillion. The FIRS also recorded a reduction in the cost of collection from 2.6% in 2016 and 2.49% in 2017 to 2.14% in 2018. To build on the success recorded last year, the Chairman of the FIRS has set a target of NGN8 trillion for 2019. This article seeks to consider some of the developments that resulted in FIRS' collection feat in 2018 and what we can expect in 2019.

Voluntary Assets and Income Declaration Scheme (VAIDS)

VAIDS, the tax amnesty programme which was launched in July 2017, was extended till June 30, 2018 when it finally closed. It is reported that the FIRS recovered an estimated sum of NGN92billion from the amnesty program. The FIRS has stated that it has no intentions of relaunching the programme. In its place, the Voluntary Offshore Assets Regularisation Scheme (VOARS) was launched by an Executive Order of the President in October 2018.

VOARS gives Nigerian taxpayers who have assets outside Nigeria, a 12-month compliance period commencing from October 8, 2018 within which to declare such assets and income derived from them, and to pay a one-time levy of 35% of the value of such assets in lieu of unpaid taxes and any accrued penalty and interest on such taxes. VOARS is controversial programme in various respects. As at the date of this article, the FIRS has not published much information about the effective implementation of VOARS, particularly in terms of whether the affected taxpayers have been participating and how much tax, if any, has been collected. It is possible however, that 2019 will witness a more aggressive attempt by the government to implement this programme unless it finds it impracticable to do so.

Appointment of Banks as Taxpayers' Agents
In August 2018, the FIRS, relying on Section 31 of the Federal Inland Revenue Service (Establishment) Act ("FIRS Act") and Section 49 of the Companies Income Tax Act 2004 (as amended) (CITA), began to issue letters to commercial and merchant banks, appointing them as collection agents under a 'Power of Substitution' granted to the FIRS by Section 31 of the FIRS Act. The aim of the FIRS was to target some identified 6,772 alleged 'tax defaulters' with a turnover of between NGN1 billion and NGN5 billion in their bank accounts who either have no Tax Identification Numbers (TIN) or who have a TIN but have never filed tax returns.

Section 31 of the FIRS Act provides, among other things, that the FIRS may, by notice in writing, appoint any person to be the agent of a taxable person if the circumstances make it expedient to do so. The agent so appointed may be required to pay any tax payable by the taxable person, from any money which may be held by the agent of the taxable person, and where the agent defaults, the tax shall be recoverable from him. This action of the FIRS generated a lot of controversy, especially in relation to the question of whether the FIRS followed due process in invoking Section 31 and Section 49. In any event, the FIRS succeeded in collecting large amounts of tax from some affected companies through this action.

There are several companies however who had not defaulted in their tax obligations but whose accounts were frozen by the banks based on the FIRS letter. These companies suffered relative hardship to their operations and many are contemplating challenging both FIRS and the banks that placed a restriction on their accounts. It is likely however, that FIRS will continue with this exercise in 2019. It is also hoped that there will be a judicial pronouncement on the FIRS' action.

Review of the Transfer Pricing Regulations

In August 2018, the FIRS issued a revised version of the Income Tax (Transfer Pricing) Regulations (TP Regulations) which introduced

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greater disclosure and documentation requirements, as well as huge penalties for late filing. The TP Regulations set the 31st of December 2018 as the deadline for all eligible companies to file all outstanding Transfer Pricing (TP) returns. Companies that failed to make a TP declaration within the deadline and did not succeed in requesting an extension from the FIRS, will be liable to pay a penalty of NGN10 million and an additional penalty of NGN10,000.00 for each day that the default continues. Companies that failed to make TP disclosures and file the required documentation within the deadline will be liable to pay a penalty of NGN10 million or 1% of the value of the transaction not disclosed, whichever is higher, and an additional penalty of NGN10,000.00 for each day that the default continues.

To demonstrate its resolve and seriousness, the FIRS stated in its Transfer Pricing Guidelines that the administrative penalties imposed by the TP Regulations shall be fully visited upon any taxpayer who neglected or failed to comply with required obligations by the set date of 31st of December 2018. We can expect that there will be a strict enforcement of these administrative penalties by the FIRS in 2019.

Country-by-Country Reporting Regulations

Although published in June 2018, the Income Tax Country-by-Country Reporting Regulations 2018 (the "CbCR Regulations") took retroactive effect from 1st January, 2018. The CbCR Regulations give effect to the provisions of the Country-by-Country Multilateral Competent Authority Agreement ("CbC MCAA") signed by Nigeria in August 2016. The CbCR Regulations are supplemented by the FIRS Guidelines published in July 2018 and the OECD Guidance on the implementation of CbC Reporting (BEPS Action 13) as revised from time to time.

The objectives of the CbCR Regulations include providing tax authorities with information about the global activities, profits and taxes of multinational enterprises and information to better assess international tax avoidance risks; to improve transparency of multinationals in their tax practices, and to prevent tax evasion or avoidance through base erosion and profit shifting. CbC filing also forms part of the contemporaneous documentation filing requirements under the revised TP Regulations. According to the OECD, over 1,400 bilateral exchange arrangements are in place between jurisdictions committed to exchanging CbC reports. The first exchanges were scheduled to take place in January 2019. Under the Nigerian CbCR Regulations, the administrative penalty for non-compliance is NGN10 million plus an additional NGN1million for every month in which the default continues. It is anticipated that the FIRS will commence the enforcement of the penalty provisions stringently in 2019.

Implementation of Other Initiatives to Counter BEPS (Base Erosion and Profit Shifting)

As part of the Inclusive Framework of the OECD BEPS initiative, Nigeria has also signed other multilateral instruments that make automatic exchange of information mandatory. It is expected that in 2019 Nigeria will ratify these instruments to become part of its local laws and, with the information that may become available to the FIRS, there will be an increase in the level of compliance which could lead to increased tax collection.

In conclusion, companies doing business in Nigeria should expect an escalation of the aggressive tax collection and enforcement strategies of the FIRS in 2019. Companies should therefore ensure that they meet their compliance obligations under the various tax laws and regulations but should also not hesitate to challenge the FIRS when it appears that their rights as taxpayers are being infringed.

Should you have any questions or require clarification regarding this or any other developments, please contact the following people:

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