Review of some effects of nigerian corporate tax regime on investment promotion

Economics, Tax

REVIEW OF SOME EFFECTS OF NIGERIAN CORPORATE TAX REGIME ON INVESTMENT PROMOTION BY: Y. S. UTHMAN 1. 1 INTRODUCTION: Neither the Companies Income Tax Act nor any Nigerian Tax Law provides for the definition of the term tax or corporate tax. In an Australian case of Mathews v. Chicory Marketing Board, a tax has been defined as " a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the purpose of government by means of contributions from individual persons. " In addition, Mr. Justice Roberts, in an American case of United State v. Butler, defined tax as follows: " A tax in general understanding of the term and as Used in constitution, signifies an exaction for the support of government. " Accordingly, tax is not an optional payment or voluntary donation to the government. It is rather, a kind of an enforced contribution exacted in accordance with the legislative authority. Therefore tax, in modern period takes the forms of pecuniary burden laid upon individuals or property to support government. It is normally imposed by statute. In the same vein, corporate tax is defined as a tax levied on corporations' profits. In other words, it is a tax levied by various jurisdictions, on the profits made by companies. It is therefore a tax imposed by the government upon the profit of any company incorporated within or outside Nigeria. Taxation in general and corporate tax in particular, looms in every nook and corner of the nation’s economy. It therefore plays a pivotal role in the development of the nation. For instance, in year 2009 the Federal Government generated N2. 2tn and N2. 8tn in 2010 as tax revenue. Corporate taxation has therefore occupied a great space and significant position in the economy of the country. The aim of this paper is to examine some problems and point out some loopholes which arise from the legislation governing the corporate taxation which may affect the status of investment in Nigeria. 1. 2 IMPOSITION OF TAX It has been provided under the Company Income Tax Act (CITA) that: Subject to the provision of this Act, the tax shall … be payable … upon the profit of any company accruing in, derived from, brought into, or received in Nigeria…. Nigerian corporate tax is governed by the CITA. In other words, a part from the oil producing companies which as the result of the complicated nature of the oil industries are taxed under the Petroleum Profit Tax Act(PPTA), the profits of all Nigerian and foreign incorporated companies accruing in, derived from, brought into, or received in Nigeria are normally taxed under the CITA. It is also worthy to note that the phrases “ accruing in, derived from, brought into, or received in Nigeria, " encapsulated in the above provision need to be thoroughly scrutinized. In the case of Commissioner of taxation v. Kirk the phrase “ derived from" was held to be synonymous with “ accruing in". Both were meant to refer to “ acquired, obtained or got. " Additionally Hooper J. made a further elucidation in respect of the above words. In the case of Taufic Karan v. Commissioner of Income Tax, he lucidly stated that: “ The word “ accruing in" and “ received in" appear to me to import a clear territorial limitation to Nigeria. " 1. 3 MINIMUM TAX CLAUSE It is provided under the CITA that: ... Where in any year of assessment, the ascertainment of total assessable profits from all sources of a company result in a loss, Or where a company’s ascertained total profits results in no tax payable, Or to payable which is less than the minimum tax, there Shall be levied and paid by the company the minimum tax prescribed... It is clear from the above that CITA provides for the payment of corporate tax even if the company fails to secure any gain or profit. In other words, companies are obliged to pay tax even in the event of incurring loss in their business. This is a serious problem that has a negative impact on the companies in general and their investment in particular. The taxation of companies operating at a loss is not only grossly inequitable but also destructive to business enterprises. To tax them in the above situation is to pave a way for their eventual death. This is because it can subsequently discourage company from proceeding with its own business activities. It can also push the shareholders to withdraw their invested shares that finance the activities. Subsequently, the company will be closed and the business will be wound up and liquidated. This can actually mitigate the income expected by the government from corporate taxation. Consequently liquidity may not be enough to cater for public services. In the same way, workers of the company will become jobless. This will definitely compound the problem of unemployment that has a severe effect on both the social and economic life of the nation. 1. 3 TAX RATE Another problem that can also affect the investment promotion in Nigeria is the rate of tax levied on the companies. The act thus provides: There shall be levied and paid for each year of assessment in Respect of the profit of every company, tax at the rate of thirty Kobo for every Naira. It is good to observe that it is one hundred Kobo that makes one Naira. Thirty Kobo of one Naira is therefore 30% of it. Accordingly the rate of tax statutorily imposed upon the profit of any company or corporation in Nigeria is thirty percent (30%). It is important to know that global view of the rates of corporate tax at international level reveals the following: 1. Ireland corporate tax rate is 12. 5 %, 2. Hungary corporate tax rate is 18%, 3. Canada corporate tax rate is 19%, 4. Russia corporate tax rate is 24%, 5. Norway corporate tax rate is 26%, 6. United Kingdom (UK) corporate tax rate is 28% and 7. United State of America (USA) corporate tax rate is 35%. It is obvious from the above that the tax rate of 30% provided and imposed by the CITA on incorporated companies in Nigeria is among the highest in the world. This is a clear deviation from the growing international trend of harmonizing the rate of corporate taxes. This can negatively affect the enhancement of country’s global competitiveness. As the result of the rate many investors may prefer to inject their resources in a country that is tax haven favourable to their business. 1. 4 DOUBLE / MULTIPLE TAXATION Corporate multiple taxation is another problem that can also leave an unpleasant impact on investment promotion in Nigeria. It is relevant to state that Multiple taxation is said to have occurred when the same income is subjected to more than one tax treatment. Double taxation, triple taxation etc are common examples of multiple taxation. The main issue here is that the same income or money is taxed more than once. If it is taxed twice, it is then a double taxation phenomenon. When it is taxed thrice, it is termed as triple taxation. It is provided under section 80 of the CITA that: ... the company paying ... dividend ... or making such distribution shall ... deduct there from tax at the rate prescribed under subsection (2) of this Section ... Thus subsection two provides that: The rate at which tax is to be deducted under this section shall be 10 per cent. This is clear evidence on double taxation of distributed corporate earnings. A corporation is taxed as a separate entity on its taxable income, and the shareholders are taxed on distribution of the dividends. In other words, section 40 (1) of the CITA imposed 30% in respect of profits of a company while section 80 imposed another 10% on the same income in the name of dividend taxation. By implication, the combined corporate and individual tax burden on distributed earnings is 40%. This is a serious issue. The rate is too high. It can tamper with promotion of investment in Nigeria. This is because a corporation has no independent tax capacity apart from its shareholders. Thus, the burden of the tax ultimately falls on individual shareholders. This can subsequently discourage them from further investment. In general, multiple taxes constitute a great problem connected to the investment promotion in Nigeria. Manufacturing sector in Nigeria undoubtedly, suffer the problem of multiple taxation in different shapes and shades. These include import duties, export and excise duty, sales and VAT, Withholdings and income taxes, Mobile advertising & billboard levies, Education levies, Social responsibility charges etc. Experience has shown that these taxes and levies far exceed the prescribed existing provision of the CITA. This critical issue needs an urgent attention. This is because the moment a room or an avenue of illegal harassment exists and the outdated laws are not abolished; the investors will definitely feel threatened that they may lose their money. Hence, day in day out, the companies will be closed down to re-surface in other countries with conducive atmosphere of investment. 1. 5 METHORD OF APPROVING INCENTIVES Generally, the present method of operating and approving some incentives and tax allowance is discouraging. This is because it actually contains some various restrictions that serve as disincentives to the investors. For instance, the CITA also provides for the rural investment allowance for any company incurs capital expenditure on the provisions of facilities such as electricity, water, tarred road or telephone for the purpose of a trade or business which is at least 20 kilometres away from such facilities provided by the government. Apparently, the aim of this allowance is to encourage investors to establish companies and invest in the rural areas. But the Act also provides that: “... The rural investment allowance shall be made against the profits of the year in which the date of completion of the investment falls and the allowance or any fraction thereof, shall not be available for carry forward to any subsequent year whenever full effect cannot be given to the allowance owing to there being no assessable profits or assessable profits less than the total allowance for the year the investment was made. " It can be seen from the above that rural investment allowance is restricted to the profit of the year in which the date of completion of investment falls. This is a problem which has a negative impact on investment in the rural areas. The provision is a kind of disincentive rather than incentive. 1. 6 COMPLEXITY OF NIGERIAN TAX SYSTEM Another problem which is also connected with the impact of corporate tax laws on investment promotion in Nigeria is the complexity of the Nigerian tax system. Before an incentive is granted a company has to pass through various agencies for screening and scrutiny. Lack of proper co-ordination between the various government agencies responsible for administering, approving and granting of various incentives constitutes a great problem and impediment to the investment in Nigeria. This is because the problem makes the incentives very difficult and too expensive to be obtained. This is a problem that can serve as a hindrance for the promotion of investment in Nigeria. 1. 7 TAX EVASION / AVOIDACE Another problem that may also have a negative impact on investment promotion is the evasive and avoiding attitude of many companies in Nigeria. From the estimated one million registered companies at the Corporate Affairs Commission (CAC), Nigeria, it is believed that an estimated 50% of these companies do not pay company tax. This is a serious problem. It makes the Government to lose billions of Naira annually from the taxation of corporate bodies. This can subsequently reduce the government revenue which is used for public services. Beside the non compliance of the local companies to the CITA, foreign companies are even smarter in corporate tax avoidance. To evade or avoid corporate tax is to deprive government sufficient amount of money to be used for public services. This can subsequently render it to be incapacitated to provide adequate security, good roads and other social amenities utilised by the investors. This can seriously discourage investment in the country. 1. 8 CONCLUSION From the forgoing, it is apparent that the legislation governing the corporate taxation in Nigeria has many problems that hinder the progress of investment. This is because they serve as stumbling stones that can slow down the progressive move on promoting investment in the nation. Consequently there is a need to amend those provisions in the CITA that negatively affect the status of investment promotion in the country. --- [1]. 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