TAX PLANNING MODULE

Technical Note

-The Nigerian Tax Environment- *Facilitators should introduce participants to basic concepts of tax & the workings of the Nigerian tax system using illustrations they can relate with.*

-Highlights of Nigerian taxes

-Tax administration & Dispute resolution

-Tax Avoidance & Tax Evasion

Meaning of Tax avoidance & Tax Evasion

-Tax Considerations at the Planning Stage

-Tax impact on business decisions:

Advantages & Disadvantages of incorporation

Establishing & terminating a business

Loss relief

-Engaging Tax Authorities & Regulatory Bodies

Accessing available tax waivers

Pioneer Legislation

-Tax Compliance

Annual return & filling procedure

Importance of a Tax Consultant

INTRODUCTION

A basic knowledge of tax implications of business decisions would help participants plan their business intelligently, legally minimizing their tax obligation & encourage voluntary compliance.

The Nigerian tax environment

Tax administration in Nigeria is divided into 3 parts to take care of the 3 tiers of government; Federal, State & Local Governments.

While the Federal Government has the exclusive power to impose tax on individuals & corporate bodies by way of parliamentary acts, [the Companies Income Tax, the Petroleum Profits Tax Acts & the Personal Income Tax came into existence as a result of enactment] the power to collect is shared among the three tiers of Government.

The personal Income Tax Act 1993 identifies taxable persons, determines their assessable income& taxes that income taking cognizance of the residence of the taxpayer & the source/origin of his income.

The Companies Income Tax (Amendment) Act 2007 regulates the taxation of companies.

Highlights of Nigerian Taxes

Personal Income Tax:

It is a tax that is imposed on individuals who are either in employment or are running their own small businesses under a business name or partnership.
This tax is generally collected by state governments from those that are resident in their various states, regardless of whether they are federal, state, local government, or private sector workers. The Federal Inland Revenue Service, however, also collects this tax but only from residents of the Federal Capital Territory

Company Income Tax

The Companies Income Tax Act 2007 –CITA2007 regulates the taxation of companies through the FIRS. The applicable tax rate is 30% [20% for companies with turnover less than N1.0m] on assessable profit

Education Tax Fund ETF-In addition to the CIT, all registered companies are required to pay 2% of their assessable profit into the Education Tax Fund which is mandated by the Education Tax Act.

PETROLEUM PROFITS TAX-Applicable to companies engaged in the exploration, refining & marketing of petroleum

VALUE ADDED TAX

This is a 5% tax applicable on all goods produced or rendered in the country with the exception of medical & pharmaceutical products, basic food items, fertilizer, agricultural & veterinary medicine, books & educational items.

CAPITAL GAINS TAX

These are gains accruing from increases in the market value of assets to a person who does not habitually offer them for sale and in whose hands they do not constitute a stock-in –trade. Such assets include plant & machinery, land & buildings, goodwill, secret processes etc.

The tax Act charges tax of 10% on any capital gains made by individuals & corporate bodies whenever they dispose off assets.

WITHHOLDING TAX

It is usually made in respect of contracts, agency arrangements, professional services, technical services, consulting services, management services, and construction & building services.

DOUBLE TAXATION AGREEMENTS/TREATIES

These are agreements entered into by Nigeria with other countries with a view to affording relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the law of the country concerned; It ensures that the tax payable in Nigeria on the profit of a Nigerian company being remitted into the country is reduced by the amount of Foreign Tax'' paid abroad and where an overseas company receives profits from Nigeria that has already been taxed.

Tax Administration:

The Tax authorities of the 3 tiers of government include:

-The Federal Tax Authority; through the Federal board of Inland Revenue

-The State Tax Authority; through the State board of internal revenue

-The Local Tax Authority who act through local government revenue committees.

Joint Tax Board (JTB):

This board comprises all Chairmen of States boards of internal revenue under the chairmanship of the Federal Board of Inland Revenue. Its activities center around formulates tax policies & coordinates the operational activities of the three tiers of government.

Sources of Tax Law

The under listed are sources of Tax Law & should be consulted

-1999 Constitution

-Tax statutes

-Case law i.e. precedents

-Informational circulars i.e. periodic leaflets addressing contemporary tax issues.

-Revenue practice & rulings

Tax Avoidance & Tax Evasion

Meaning of Tax avoidance & Tax Evasion

Tax Avoidance can be described as doing one's utmost to legally minimize tax liability while Tax evasion is endeavoring to reduce one's tax liability through the use of illegal means.

Example of tax evasion is failing to declare part of one's income when one is under duty to make full & complete declaration for tax purpose OR by claiming fictitious expense.

Tax avoidance can be further differentiated into two; Artificial & fictitious transactions which the law frowns at and "ordinary" tax planning procedures.

Tax Considerations at the Planning Stage

Tax planning is a forward looking approach to managing tax issues & involves Integrating Tax consideration at the planning stage. It encompasses mitigating the impact of tax on business decisions.

-Tax impact on business decisions:

Advantages & Disadvantages of incorporation

Incorporated companies-Enjoy tax expenses allowances.

-They also benefits from pioneer legislation of tax holiday.

- Non-Nigerian companies enjoy some corporate tax liability benefits.

However they pay higher tax rates.

They cannot set off taxes against other income.

Establishing & terminating a business

Commencement

For new trades or businesses, the basis of assessment for the first three years is as follows:

(a) Normal basis:

1st year - profits from the date of commencement to 31st December will be relied upon to assess for this year.

2nd Year- the basis of assessment is the profits of the first twelve months from date of commencement.

3rd year- the basis of assessment is the profits of the preceding year, but not exceeding or less than 12 months.

Election Option Based On Actual Year Basis

Under the law, a taxpayer has the choice of election between the normal basis period and actual basis period for the second and third years of the commencement of trade. Where this applies, the request should be made within two (2) years after the end of the second year of assessment.

Cessation

The law provides that the assessable profit of the year of assessment shall be the amount of profit of that year i.e. from January of the year to date of cessation.

For the year proceeding the year of cessation, (penultimate year), the amount of profit computed on the preceding year basis (P.Y.B) shall be compared with the amount of profit computed on actual year basis and the higher of the two results is taken as assessable profit at the discretion of the Revenue Authority.

Loss Relief

Loss is when deductible when deductible expenditure exceeds chargeable income. It is however the duty of the tax payer to prove loss & lay claim to relief in writing.

The current loss relief is set off against previous accounting period & losses can be carried forward indefinitely.

Engaging Tax Authorities & Regulatory Bodies

-Accessing available tax waivers

-Pioneer Legislation

*****Exemptions from Company Income Tax include:

-Companies located in approved Export Processing zone/Free Trade Zone.

-Companies granted pioneer status for the period relief lasts.

-Capital allowance rates range between 15% in respect of industrial & non-industrial buildings up to 95% in respect of companies engaged in Mining, Agriculture & Research.

-Companies are allowed to carry forward losses (without paying tax) during the first ten [10] years of operation, except in Agriculture where there is no limit.

- Companies are also subject to a minimum tax where there is no assessable profit and have been in operation for at least four calendar years.

Companies with turnover of N500, 000 and have been in operation for at least four calendar years, a minimum tax shall be the highest of:

-0.5% of Net Asset

-0.05% of gross profit

-0.25% of turnover

-0.25% of paid up capital

Where the turnover is above N500, 000 minimum shares shall be the highest of any of the above listed plus 0.125% of turnover over N500, 000.

Exemption from minimum tax:

-Company engaged in Agricultural business;

-Companies with at least 25% imported equity or foreign participation;

-All companies in their first four years.

Tax Compliance

Importance of a Tax Consultant

The benefits of engaging a professional to coordinate accounting & tax function far outweigh the cost incurred from unintentionally contravening the tax law.

Filing Tax Returns

The law requires a taxable person to file the returns of income or a declaration of his annual income/remuneration for the current year with the relevant Tax Authority where he is resident.

This return is to be accompanied by a true and correct statement in writing containing:

a) The amount of income from every source during the year preceding the year of assessment,
b) Such particulars as may be required for the purpose of the Act with respect to any such income, allowances, reliefs, deductions etc.
c) A declaration by him or on his behalf that the return contains a true and correct statement of the income disclosed on the form, in accordance with the provisions of the Act

Requirements for Filing of Tax Returns

*All taxpayers, including those granted exemption from tax, are required to file their tax returns to the relevant Tax Authority every year.

The audited accounts of the business for the preceding accounting year must be accompanied by:
- Income tax computations,
- Capital allowance computations,
- Schedules of fixed assets, trade debtors and trade creditors and
- Evidence of payment (whole or part) of tax being assessed.

Time of Filing

- All companies must submit their audited accounts not later than six (6) months after the end of the company's accounting date.

- A newly incorporated business is allowed to submit its returns within 18 months from the date of its incorporation, or not later than six (6) months after the end of its first accounting period, whichever is earlier.

EXCEPTIONS
A company may request in writing for approval to submit accounts at a later date. This must be specifically approved in writing by the relevant Tax Authority.

Basis for Assessment

Taxpayers that are liable to tax under CIT A are to be assessed on basis periods for which their individual accounts are made up. Companies have a choice under the relevant Tax laws as to the date to which they make up their accounts, provided that the accounting year-end dates are maintained from year to year. Normal basis period is a period of twelve (12) months from the date.
*While filling assessment forms, watch for errors like: Duplication of names & misstatement of staff nationality.

Changes in Accounting Date

Every taxpayer is at liberty to change its accounting date, if for any reason, it finds it expedient to do so. In such a case, the assessable profits of the year of assessment in which the change occurs and the two subsequent years are to be computed at the discretion of the relevant tax authority on confirmation of the permanency of the new date and reasons for such a change.

Other assessments/Levies

There are other levies usually encountered in the course of assessment duties, among which are:

Penalty for Late Returns:

Penalty is normally imposed when a taxpayer's audited accounts and tax computations are submitted late to the Revenue Authority. The amount is subject to the discretion of Government.

Pre-Operational Levy:

This is a levy imposed on companies which fail to commence business within 6 six months after their incorporation.

*It is to be levied when the taxpayer applies for current Tax Clearance Certificate (TCC). Preoperational levy should not be imposed for any previous years when the Company did not apply for TCC; neither should it be raised in arrears to cover earlier years.

Objections

Tax payers are free to raise objection to any government assessments, which they believe are incompatible with the relevant tax laws or where they are of the opinion that such assessments were raised on wrong premises and are therefore objectionable.

*An objection can either be valid or invalid.

Valid Objection

Valid objection must be made in writing and filed within the stipulated period (usually 30 days) stating the precise grounds of objection.

*It must always be accompanied with the relevant audited accounts and computations.

Invalid Objection

Any objection that fails to possess the quality of a valid objection is rendered invalid. Where all the grounds of objection are rejected by the relevant Tax Authority, a notice of refusal to amend the assessment is sent to the taxpayer. The taxpayer then has the option to appeal within 30 days of the receipt of the notice of refusal to amend or pay the assessment.

* It is important to add that when an assessment is declared final and conclusive, no further correspondence is entertained on the assessment, except that appeal proceedings are initiated.

Appeals

Provisions have been made in the Nigerian tax law to enable aggrieved persons seek redress under a different and independent adjudication. Such appeals could be referred to the Body of Appeal Commissioners and the Civil Courts of the land. It must be noted that there are specific guidelines provided for such appeals. Officers are advised to familiarize themselves with these

procedures in order to be able to render assistance to taxpayers whenever they may be requiring such.

Taxes collected by the 3 tiers of government.

The Federal Government

1. Withholding Tax (Companies)-
2. Petroleum Profit Tax
3. Value Added Tax
4. Stamp duties on instruments executed by bodies corporate and residents of the Federal Capital Territory
5. Capital Gains Tax on residents of the Federal Capital Territory Abuja, bodies corporate and nonresident individuals
6. Stamp Duties on bodies corporate and residents of the Federal Capital Territory Abuja
7. Personal Income Tax from
   (a) Residents of the Federal Capital Territory

   (b) Members of the Police

   (c) Members of the Armed Forces of the Federation

   (d) Staff of the Ministry of foreign affairs and non-resident individuals.

Examples of tax collected by the State Governments include[1]:

1. Withholding Tax (individuals only)
2. Personal Income tax in respect of
   (a) Pay-As-You-Earn
   (b) Direct taxation (self assessment)
3. Capital Gains Tax on individuals
4. Pools betting and lotteries, gaming and Casino taxes
5. Stamp duties on instruments executed by individuals
6. Road taxes
7. Business premises registration fees
8. Development fees on individuals
9. Right of occupancy fees on land owned by the State Government in urban areas
10. Market taxes and levies where State finance is involved

The Local Governments collect the following taxes amongst others:

1. Shops and kiosks rates
2. Tenement rates
3. On and off Liquor License Fees
4. Slaughter slab fees
5. Right of occupancy fees on land in rural areas excluding those collectable by the Federal and State Governments
6. Market taxes and levies excluding any market where State finance is involved
7. Motor park levies
8. Cattle tax payable by cattle farmers only
9. Signboard and advertisement permit fees.