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Improved Double Tax Arrangements in Nigeria: Any reason for delay?

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Taxation is a significant consideration for foreign investors who seek to do business in Nigeria. This is in addition to other factors such as security, availability and access to power, rule of law etc.

All over the world, residence and source based taxation are two principles which drive the taxation of corporate players in international markets/economies. Accordingly, an inevitable risk for multinational companies with cross-border investments/operations is double taxation. Clearly, the search for new markets offering the best margins implies that multinationals would continue to invest in various economies outside their home-countries/markets. This makes double taxation a clear and present risk exposure for such businesses.

In order to promote world-wide economic development and to lessen the effects of double taxation on companies, the Organization for Economic Cooperation and Development (OECD) and the United Nations developed model Conventions (model double tax treaties) on Income and Capital. These models define the principles of permanent establishment, allocates taxing rights amongst nations and provides basis of information sharing and dispute resolution between contracting states.

In Nigeria, the OECD model has served as the basis on which most of the current double taxation treaties (DTTs) with other countries have been formulated. Nigeria currently has DTTs with thirteen countries namely: The United Kingdom, The Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, Mauritius, South-Korea and Italy. All the treaties are comprehensive except the treaty with Italy which covers Air and shipping agreement only.

In line with the role of taxation as a tool for wealth and employment creation, the National Tax Policy (NTP) of Nigeria identifies international and regional treaties as one ways of attracting foreign direct investments to Nigeria. To this end, it is imperative that Nigeria leverages on its status as the largest economy in Africa and takes advantages of the benefits DTTs offer.

Meanwhile, it is worthy of note that Nigeria's 13 double tax treaties is a far cry from the number which other developed and developing countries have. For instance, the UK currently has DTTs with 131 countries, Canada has 92 DTTs and Malaysia has 68 DTTs. Current statistics have shown that there is a positive correlation between DTT and the level of foreign direct investment inflow to Nigeria.

Accordingly and to accelerate Nigeria's growth to being one of the top 20 economies in the world, it is clear that Nigeria has to widen its current DTT network.
Whilst it is public knowledge that the Government through the Federal Inland Revenue Service (FIRS) is developing a new model tax treaty which would make the establishment of new DTTs much easier, the following points are worthy of consideration:

The delays in ratification of the treaties

In Nigeria, when treaties are signed with other countries, they do not automatically have the force of law. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria expressly provides that before a treaty between Nigeria and another state shall have the force of law it must be enacted into law by the National Assembly.

Nigeria currently has 2 DTTs that are yet to be ratified – with Mauritius and South Korea. These treaties are long overdue for ratification as for instance, the treaty with Mauritius was signed in 2012. A delay in the ratification of any treaty would give room for uncertainty amongst the treaty's stakeholders. Definitely, it would not be out of place to state that the delays in the ratification of the DTTs with Mauritius and South Korea are currently holding back the flows of certain foreign direct investment into Nigeria

In the era where the Federal Government is trying to encourage foreign investment in Nigeria, an uncertain business environment is the last thing the Government needs as foreign direct investment and uncertainties are two opposite sides of a coin. To this end, it is in everybody's interest that Nigeria speeds up the process of ratifying the already signed treaties as time is of the essence in bringing in foreign investment.

Mutually beneficial treaties

Countries enter into DTTs / agreements on the basis that it would ultimately be beneficial to both of their economies. However, this is not always the case as some countries seemed to have benefitted more than the other from DTT arrangements. In this light, the Federal Government should also review the tax treaties it currently has with other countries to determine if Nigeria is truly benefitting from these DTTs. Where it is established that Nigeria is not, re-negotiating and amending key clauses of the DTTs should not be out of place.

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