Introduction

Globalisation and Technological Advancements are encouraging more Nigerian Businesses to diversify their spheres of businesses, into other countries; especially West and South African countries.

As commendable as the expansionist agenda of these Nigerian companies may be, there are Nigerian and the foreign country specific tax obligations that should be carefully considered before valuable human and financial resources are expended, or continue to be expended on such ventures.

Basis of Companies Income Tax Applications

The underlining basis for imposing Companies Income Tax on the profits of a Nigerian incorporated or registered company are as follows; Companies Income Tax is imposed on All the world-wide Profits of a Nigerian Company, from All its Sources of Income or Profits, on such Profits that accrue in, are derived from, or are brought into, or are received inNigeria.

The Companies Income Tax Rate in Nigeria is Thirty Per Cent (30%); and this corporate tax must be paid in the currency in which the Profit or Income is earned.

Mandatory Filing of Tax Returns

All Companies, whether resident or non-resident, whether tax exempt or not tax-exempt, are mandatorily required to file a Self-Assessment Tax Return disclosing all the sources of their income and profits earned, not later than six (6) months after the end of such a Company?s prior financial year end. Stiff Punitive Fines apply if any company is found guilty of any infraction in failing to file a Self-Assessment Tax Return within the timeline provided.

Minimum Tax Provisions

The Companies Income Tax Act (as amended) (?CITA?) also provides that where any Company, in any year of tax assessment, declares a loss or no taxable income from all its business sources, having carried on business for four (4) or more years, the Tax Authority is empowered to impose on such a Company, a Minimum Tax assessed at the rate of 0.25% of the Company?s turnover where such turnover is less than N500,000; plus an additional 0.125% of such a Company?s turnover that is in excess of the initial N500,00.00 (Five Hundred Thousand Naira).

Companies that are exempted from the Minimum Tax provisions include those carrying on agricultural trade or business; companies with at least 25% imported equity capital; and companies that have carried on business for less than four (4) years.

BestJudgmentArm?sLength/ArtificialTransactions&TransferPricingRegulations

On the sensible assumption that a Company may not likely disclose all its world-wide income, from all sources, in such a Company?s Self-Assessment Tax Returns; or where the declared profits do not match the minimum industry returns for the subject period; the Tax Authority is empowered by CITA to, using its best judgment, impose a fair and reasonable tax assessment on the Company?s turnover for the period under tax assessment.

There are also now Transfer Pricing Regulations (?TPR?), which compliment the provisions of CITA regarding the taxation of arm?s length, fictitious or artificial transactions. Tax and TPR rules empower the Tax Authority to make necessary tax adjustments on income transactions that are reasonably presumed to be artificial, or fictitious, or not at arm?s length basis; i.e. transactions between associated companies devoid of independence or neutrality; or where the control of one or other entities is exerted by another or other entities.

Tax Reliefs for Nigerian Foreign Businesses

The Companies Income Tax Act (as amended) provides that any dividend, interest, rent or royalty derived by a Nigerian Company from any country outside of Nigeria, which income is brought into or received in Nigeria through formal licensed financial institutions, is exempted from Companies Income Tax in Nigeria.

It is envisaged that before the above mentioned tax exemption can apply, the Nigerian company will have disclosed to the Tax Authority via its mandatory Annual Self-Assessment Tax Returns, its undertaking in a foreign company that is outside of Nigeria.

It is also envisaged that as with foreign investments made in Nigeria, whose Investors are required to import their capital and obtain Capital Importation Certificates before they can in future repatriate their earnings through formal financial institutions, Nigerian Companies may also be required to provide necessary paperwork of the export of their capital from Nigeria to the foreign country before any return on such foreign investment can enjoy tax exemption in Nigeria.

Relief from Double Taxation is another tax relief to consider. Where a Nigerian Company earns dividend or other income from outside of Nigeria from which it cannot claim the above mentioned tax exemption, such dividend or other income where it originates from a Commonwealth country with whom Nigeria has a gazetted Double Taxation Treaty (?DTT?), could enjoy a tax relief at the tax rate provided for in the DTT.

Some of the countries with whom Nigeria currently has DTT with include Belgium, Canada, China, Czech Republic, France, Netherlands, Pakistan, Philippines, Romania, Slovakia, South Africa and the United Kingdom. Though Article 40(5) of the Economic Community of West African States (?ECOWAS?) Revised Treaty enjoins Member States to avoid cases of Double Taxation between Community Citizens of Member States, and to grant assistance in combating International Tax Evasion through the execution of a Double Taxation and Assistance Convention, there is presently no record of such a Convention ratified by ECOWAS Member States.

Conclusion

Though Nigeria is a Member of many international economic organisations, such as ECOWAS, the African Union, the Commonwealth, etc, Nigeria does not have DTTs with very many of these Member countries. This failure has impeded free trade, as well as promoting double taxation and tax evasion in the process.

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