

# REPORT ON TAX TREATY STRATEGY WORKSHOP BY THE FEDERAL INLAND REVENUE SERVICE (FIRS)

## PREAMBLE

The federal Inland Revenue service (FIRS) is the apex regulating body as far as tax issues are concerned in Nigeria. The Nigerian Federal Inland Revenue Service, FIRS, was originally created in 1943. It was carved from the erstwhile Inland Revenue Department that covered what was then the Anglophone West Africa (including Ghana, Gambia, Sierra Leone) during the colonial era. The Federal Inland Revenue Service is a statutory creation of the Federal Inland Revenue Service (Establishment) Act 2007; hence it is constitutionally empowered to collect taxes in Nigeria.

Taxes are an involuntary fee levied on corporations of individuals that is enforced by a level of government in order to finance government activities. Tax provides revenue to fund governance, ensures resource redistribution, streamlines consumption of certain goods and services, reduces inflation and generates employment and above all help in recurrent and capital expenditure of government.

The event was the first ever Tax Treaty Workshop organized by the FIRS. It was held at the Congress Hall of The Transcorp Hilton Hotel, Abuja from Monday 19th – 20th of March 2012. The public sector, private sector and the organized private sector were all invited to the workshop. Amongst those that were invited are experts on tax issues. Below are list of stake holders that graced the workshop in no particular order as follows

- Ministry of Finance.
- The Senate.
- Federal Inland Revenue Service (FIRS).
- Dangote group.
- Banks.
- Nigeria Liquefied Natural Gas (NLNG).
- Representatives of foreign companies.
- IMF / World Bank representatives.

### DAY 1; 19th MARCH 2012.

The event began with the arrival and registration of participants. Everyone stood still as the National Anthem was played and thereafter Master of Ceremony introduced dignitaries and performed all other opening formalities. The welcome address was read by the chairman Executive Chairman, FIRS and Chairman Joint Tax Board Mrs Ifueko Omoigui Okauru. In her address she

- Welcomed everyone present at workshop and specially the Coordinating Minister for the Economy and Honourable Minister of Finance, Dr. Ngozi Okonjo Iweala.
- Recognized and put on record the gratitude of the FIRS for the support which it has received in the past eight years from the National Assembly.
- "Avoidance of Double Taxation Treaty and Exchange of Information Strategy" ought to have been the theme of the workshop because the workshop would mainly focus on that.

- The workshop is in line with the ongoing tax reforms, which are anchored on amongst other things having a robust tax policy framework and relevant legislation to guide the administration and operations of the Tax system.
- The National Tax policy has recognized the important role, which Tax Treaties can play in facilitating cross border trade and investment between Nigeria and its existing and its existing and prospective trade partners, an analysis of Nigeria's Tax Treaty network, will show that we have not taken full advantage of the opportunities, which exist in this regard.
- Taxation is a major consideration to any investor and along with concerns about Government policy and legislation, infrastructure, market opportunities etc. it ranks very high on the checklist of any investor.
- To further develop the Nigeria Tax system with particular reference to our Tax Treaty regime.
- The need to get Tax issues right that informed the invitation of participants from various jurisdictions, backgrounds and with varied experiences.
- Appeal to everyone to see contributions at the workshop as contributions to the overall transformation agenda of the Federal Government.
- She hopes that participant would bring their knowledge, experience and different perspectives to bear on deliberations and conclusions which will be reached.
- Finally she stated that the journey which we have embarked on towards ensuring that we have a tax system that meets the demands of a modern and developed state has been interesting and challenging in equal parts.

After the FIRS chairman gave her welcome address, The Honourable Minister of Finance gave an opening remark / keynote address to declare the workshop open. In her remark, she said

- We must as a nation reform our Tax system.
- We must look at the issue of double Taxation.
- Tax Treaty with China, Norway would soon come to reality.
- Traditional partners like USA and Germany are at advantage.
- The need to bring in private sectors and ask them what works for them in those neighbouring African countries they run to invest.
- The need to communicate adequate Treaty with trading partner.
- This workshop would help answer the Tax related questions in the country.
- The Nation needs an approved budget with good fiscal balance and job creation.
- Formerly welcomed everyone and declared the workshop open.

Mr. Onyekachi from FIRS gave a vote of thanks. In his speech he

- Thanked the minister of finance and said she believes in doings right.
- Thanked invited guest from far and wide who graced the occasion.
- Thanked members of the tax policy department.
- Thanked the press for being ambassadors.
- Generally thanked everyone and
- Most importantly thanked God almighty for making the workshop a reality.

The 1st presentation of the day followed. The topic was



## **ESTABLISHING BUSINESSES IN FOREIGN JURISDICTIONS; ISSUES, CHALLENGES AND PROSPECTS**

The presenter of this paper was supposed to be Alh. Aliko Dangote but he was unavoidably absent according to Engr. Abdullahi Sule who represented him. While Engr. Sule stood under existing protocol, he first and foremost apologized on behalf of his boss that didn't show up. He gave reasons for his absence. This session was chaired by the chairman FIRS and the discussants were Mr. Tony Elumelu who was represented by the Chief Operating Officer of UBA, Mrs. Funke Osibodu (GMB Union Bank) and Dr. Abiola Sanni.

Engr. Abdullahi Sule in his presentation gave a summary of his paper which he outlined as

1. Global Challenges Affecting FDI.
2. The Dangote Group.
3. Investing in Africa; the Nigeria Experience.
4. The Dangote Experience.

Engr. Abdullahi concluded his presentation by giving stating the key factors hampering opportunities and prospects of investment in Nigeria and Africa at large. They include

- a. Government Policies
- b. Infrastructure (Road, Power, Water etc.)
- c. Political Atmosphere
- d. Manpower and finally
- e. Return on Investment

The Theme of the 2nd presentation was

## **ESTABLISHING BUSINESS IN NIGERIA BY FOREIGN INVESTORS – ISSUES, CHALLENGES, PROSPECTS AND WAY FORWARD.**

The presenter of this paper was Mr. Babs Omotowa the MD/CEO NLNG but was represented by Mr. Akachima a Chartered Accountant with the NLNG. Chairing the session was Mazi Sam Oluabunwa (Chairman, Neimeth Pharmaceuticals Ltd) and the discussants were Dr. Taiwo Ogunleye, Mr Heinz Fisher (CFO, HUAWEI), Mr. Terhemem Andzenge from Bureau Of Public Enterprise (BPE).

In his presentation, Mr. Akachima talked about

- ✓ KEY ISSUES FOR INVESTORS. These include stability, ownership, incentives.
- ✓ THE NLNG EXPERIENCE which are its date of incorporation, Ownership Structure and Benefits.
- ✓ CHALLENGES which are instability, regulators, infrastructure, corruption and insecurity.
- ✓ PROSPECTS which include high returns, huge population/market, low labour cost and abundant natural resources.

He went further is in his presentation to tell us how the federal government can attract FDIs into the country. The enumerated them as follows

- Enforcement of Law and stability.

- Institutionalize Transparency.
- Public-Private Partnerships.
- Ensure Economic growth.
- Effective use of Fiscal and Tax Incentives.
- Reduce Multiple Tax.

The 3rd presentation for the day was on

**A COMPARATIVE ANALYSIS OF THE OECD UN AND NIGERIAN MODEL AVOIDANCE OF DOUBLE TAXATION AGREEMENT.**

The presenter of this session was Prof. Marius Van Blerck. The chairman was supposed to be Chief Kola Jamodu but he was represented by Ejinaka John. The discussants of this session were Mr. Theophilus Emuwa and Mr. Ali Ssekatawa from Uganda. Prof . Marius Van Blerck is a Global Tax Director under the Standard Bank group, Consultant to the World Bank and also a member of the South Africa Tax Court presentation was centered on Double Tax Agreement (DTA).

He highlighted the objectives of DTA as follows.

- a. Prevention of double Tax.
- b. Allocation of taxing rights.
- c. Prevention of fiscal evasion.
- d. Exchange of information.
- e. The need for immediate tax revenue.
- f. The need to encourage economic activity.

He went further to show major models of DTA. They include the OECD models, UN models and country models e.g. USA and Nigeria models. The Prof's presented the major clauses i.e. changes of the model Double Tax Agreements which was

**PERMANENT ESTABLISHMENT**

- Building / Construction / Installation .....6months
- Services ..... 6months
- Exploration ..... 2months
- Sales outlet and Delivery facilities etc.

He went further to talk about Pensions under the DTA

He said OECD gives sole Tax rights to state of residence and UN suggest broadening

- a. If paid as Social security, paying state should have sole taxing rights.
- b. Also suggests sharing taxing rights, if pension paid by a resident or PE.

As regards GOVERNMENT SERVICES, he said

1. No major distinctions between models
2. Essentially remuneration and pensions are taxed and solely in paying country, unless recipient is resident in the other state, which then gets sole taxing rights (for remuneration, if services were rendered there).

STUDENTS were not left alone in the DTA as the Prof has this to say

- Nigerian model includes trainees
- Maintenance / educational payments received by visiting students not taxable in state visited, if received from outside sources.
- Nigerian model extends this with a general exemption for remuneration as long as the person remains a student/ trainee or apprentice.

As regards TEACHERS / RESEACHERS he pointed out that

- Nigerian model clause is unique
- Remuneration received by visiting teachers / researchers not taxable in State visited, for 2years
- Does not apply if research is not in public interest but for business profit.

The topic for the 4th and final presentation for the day was

### **ASSESSMENT OF THE EXISTING NIGERIAN TAX TREATIES; ISSUES ARISING FOR CONSIDERATION IN REVISING THE NIGERIAN MODEL DTA**

The presenter was Dr. Abiola Sani and the chairman was chief J A Arogundade. The discussants are Mr. E.A Sulu, Mr. Taiwo Oyedele and Mr. Albert Folorunsho. This session basically discussed

- The nature of treaties.
- Legal counseling in relation to Treaty-making.
- The legal framework for Treaty-making in Nigeria.
- Nigeria tax Treaty Model.
- The concept of Tax Evasion and Tax Avoidance.
- Tax planning and Treaty shopping.
- Tax avoidance through low-tax jurisdiction.

### **DAY 2**

Day two started on a very warm note with the Chairman FIRS welcoming Senator Bassey Otu. The first presentation was tagged

### **STRATEGIES FOR ADDRESSING THE GAPS IN NIGERIAN DOMESTIC TAX LAWS, TAX TREATIES**

The presenter of this session was Prof. Lambert Kusters from IBFD Netherlands. The Chairman was Senator Bassey Otu and the discussants were Mr. S S Ogungbesan (an FIRS staff in charge of operations) and Prof. U jack Osimiri who was represented by Theophilus Emuwa. Prof. Kusters in his introduction gave a brief talk about Taxation and also enumerated the qualities of a good Tax system which is

- Fairness
- Stability



- Not leading to economic distortions and
- Effective

He continued his presentation by talking about

- ✓ Gaps in the Nigerian domestic Tax Laws
- ✓ Possible strategies for addressing the gaps in the domestic legislation
- ✓ Gaps In double Taxation conventions concluded by Nigeria.
- ✓ Tax Treaty Network
- ✓ Nigeria Tax Treaty Policy
- ✓ Other tax Treaty issues
- ✓ Possible strategies for addressing the gaps in tax treaties.

The second paper was taken by Victor Thuronyi (a graduate of Harvard University). The paper was titled

### **DEVELOPING A TAX TREATY STRATEGY FOR NIGERIA**

Participants of this session were the Chairman, Mrs. Funke Adekoya (SAN). The discussants whom were, Mr. Abdullah Ali Nakyea (a Ghanaian Tax Attorney) and Mr. C O A Olabode (a retired director of FIRS) and of course the presenter, Mr. Victor Thuronyi (IMF Legal Department).

The presenter themed this session as DRAWBACKS IN EXPANSION OF TAX TREATY NETWORK: WHAT? WHO? WHEN? AND WHY? He made his entire presentation under the following sub-headings

- He asked, does Nigeria really need treaties from the western countries?
- Nigeria should avoid Politically Motivated negotiations.
- Preparatory analysis.
- Review of existing Treaties.
- Each Treaty is a Treaty with the World.
- Main orientation of Model.
- Expert advice.
- Capital gains.
- Managements and technical services.
- Administration and finally
- Co-coordinating Treaties with income Tax reform

The third and final paper for the day was tagged

### **DEVELOPING THE NIGERIAN MODEL FOR AVOIDANCE OF DOUBLE TAXATION AND EXCHANGE OF INFORMATION AGREEMENTS.**

While Mr. Dike Mark did the presentation, the session was chaired by J K Naiju. The discussants include, Mr. J A Arogundade, Mr. M O Ibiloye (Tax controller Apapa ITO FIRS) and Mrs Boma Ozobia.

Mr. M Dike in his presentation talked about the following

- Background of the Nigerian DTA
- Why we should have double taxation agreement
- How they work
- How can double taxation treaties be abused?

He summarized his presentation by noting that double taxation is undesirable, because if businesses end up paying Tax on the same income in more than one country, they will not want to do business overseas, thus affecting the inward investment into Nigeria.

After lunch the entire participants was divided into syndicate groups discussion which were

Group 1; ESTABLISHING BUSINESS IN NIGERIA BY FOREIGN INVESTOR; ISSUES, CHALLENGES, PROSPECTS AND WAY FORWARD and ESTABLISHING BUSINESS IN FOREIGN JURISDICTION; ISSUES, CHALLENGES AND PROSPECTS.

Group 2; ASSESSMENT OF THE EXISTING NIGERIAN TAX TREATIES; ISSUES ARISING FOR CONSIDERATION IN REVISING and DRAWBACKS IN EXPANSION OF TAX TREATY NETWORK; WHAT? WHO? WHEN? AND WHY?

GROUP 3; STRATEGIES FOR ADDRESSING THE GAPS IN NIGERIAN DOMESTIC TAX LAWS, TAX TREATIES.

GROUP 4; A COMPARATIVE ANALYSIS OF THE OECD, UN AND NIGERIAN MODEL AVOIDANCE OF DOUBLE TAXATION AGREEMENT and DEVELOPING THE NIGERIAN MODEL FOR AVOIDANCE OF DOUBLE TAXATION AND EXCHANGE OF INFORMATION AGREEMENTS.

The rationale for the syndicate group was for every group to reach an agreement on the subject matter and then the agreement would be used to form the workshop's communique but the entire group didn't come up with a concrete agreement. Hence, the communique was postponed. The FIRS nevertheless assured participants that once their Chairman goes through the entire conclusion reached by the groups, a communique would be made and it would be made available to all stake holders at the workshop.

### **RECOMMENDATION**

I hereby recommend that this report be filed at the appropriate place at the NGF's secretariat for future reference and also efforts should be made to get the communique from the FIRS for better understanding of the workshop.