NIGERIAN TAX INFRASTRUCTURE, INCENTIVES AND INNOVATIONS IN THE TAX REFORM ACTS 2025: AN APPRAISAL*[1]

Arthur Oforbuike Ezema

Abstract

The necessity and importance of all citizens abiding to their obligation to pay tax to the state may sound rudimentary akin to the flogging of a dead horse, yet this obligation underscores the very fabric that make for modern day civilized society; the citizens pay to be protected and supplied with the basic amenities of life. On the other hand, there exist some benefits created by statute to lure the tax payer to collaborate with the state infrastructure by investing as pioneers in commerce and industry thus cutting them some slack in many tenable and untenable ways, this reality creates an imbalance which if unchecked could hamper the smooth generation of revenue and development in the nation. Using doctrinal methodology, this paper journeys on the path of discovery to make a case for the need to secure a middle course that benefits all, a middle course that ensures citizens' continued compliance with their tax obligation and a middle course which ensures continued foreign direct investment (FDI)and local industries growth. The work examined the notion of taxation as a social contract, taxation incentives in Nigeria and the provisions of the National Tax Policy, and the new Tax Reform laws 2025. The paper found the innovations in the new reforms laudable and therefore recommends effective implementation of the new tax reforms by government at all levels and by relevant institutions, a monthly publication on Internal Revenue Service website to track compliance to the legislations as well as public enlightenment on tax laws.

Key Words: Foreign Direct Investment (FDI), Innovations, Taxation, Tax incentives, Tax reforms.

1.0, Introduction; The Notion Of Taxation

Taxation is founded on the notion that there exists a social contract between the individual and the state under which the individual is obliged to contribute to the prosperous existence of the state through compulsory financial payment. Tax refers to

[1] ***Arthur Oforbuike Ezema**, LL.B(Hons) LL.M, BL, ACIArb (UK), PhD Student in Faculty of Law, Nnamdi Azikewe University, Anambra State. Email: oforbuikeezema2@gmail.com, Phone Number: 07035804499

any compulsory payment to the government imposed by law without direct benefit or return of value.[2] Taxation, apart from being an obligatory contribution to the state by the citizen, is the easiest modus by which governments' raises revenue. The ideal tax system especially in developing countries should raise essential revenue without excessive government borrowing and should do so without discouraging economic activity.[3] Nigeria is governed by a federal system; hence its fiscal operations also adhere to the same principle. This has serious implications on how the tax system is managed in the country. In Nigeria, the government's fiscal power is based on a three-tiered tax structure divided between the federal, state and local governments, each of which has different tax jurisdictions.[4]

Over the years, it has been observed that individuals and corporations are not too eager to pay tax on their own accord; taxation is no hobby, thus, the utility of tax incentives. Tax incentives can be described as a framework introduced by government to attract investments and generate particular economic activities. The primary motivation is usually to stimulate investments, most especially attract Foreign Direct Investment

(FDI).[5] Tax incentive has been an economic strategy used by both developed and developing countries to promote robust growth in key sectors of the economy.[6] Tax

[2] Federal Ministry of Finance, *National Tax Policy* (First Published: 2012, Federal Ministry of Finance 2017) 1

[3] R Jones and S Basu, ''Taxation of Electronic Commerce: A Developing Problem'' [2002] 16 (1) IRCLT 35

[4] A Odusola, 'Tax Policy Reforms in Nigeria' (Research Paper No. 2006/03 UNU World Institute for Development Economics Research (UNU-WIDER), 2006) 1

[5] ActionAid Nigeria, *Review and Compilation of Existing Studies and Reports on Tax Incentives in Nigeria* (Ford Foundation 2020) 8.

[6] H Onapajo and M Ezuma, "The Waivers for Multi-Nationals in Nigeria: Are these Based on Economic or Political Reasoning?" (*AFRICA PORTAL* 01 November 2017) 3. <https://www.africaportal.org/publications/tax-waivers-multi-nationals-nigeria-are-these-based-economic-or-political-reasoning/> accessed 25 March, 2021

incentive models in Nigeria are covered under different laws in different forms e.g. reliefs, credits, exemptions, allowances, breaks, holidays, drawbacks etc.[7] The Constitution of the Federal Republic of Nigeria 1999 (as amended) is silent on investment attraction through tax incentives, however, the Nigerian Tax Policy of 2017[8] recognizes incentives as stimulants to attract investments. However, the National Tax Policy 2017 cautions that tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition, rather than tax policies and laws should ensure equal investment opportunities and support for businesses, whether local or foreign.[9]

2.0, Some Crucial Corporate And Institutional Taxes In Nigeria

Taxation of companies in Nigeria, other than those involved in oil exploration and production is governed by the provisions of the Companies Income Tax Act (CITA).[10] The law governing the corporate tax system in Nigeria, the Companies Income Tax Act (CITA), originally promulgated in 1961, has witnessed several reforms including the repeal and re-enactment of 1979 and 1990.[11] The latest reform is contained in Companies Income Tax (Amendment) Act, 2007. The Companies Income Tax (CIT) is chargeable on the profits of a company accruing in, derived from, brought into, or received in Nigeria. The highlights of the provisions of the Act are highlighted below.

2.1 Companies Income Tax (CIT)

CIT is usually levied on profit at 30%. However, a lower rate of 20% is applicable to manufacturing or agricultural production companies, and companies engaged wholly in exports within the first five years of operation and where the turnover does not exceed N1, 000, 000.00 (One million naira only). CIT is payable by all companies doing business in Nigeria (both resident and non-resident).

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[7] ActionAid Nigeria, *Review and Compilation of Existing Studies and Reports on Tax Incentives in Nigeria* (Ford Foundation 2020) 8

[8] Federal Ministry of Finance, *National Tax Policy* (First Published: 2012, Federal Ministry of Finance 2017)

[9] Ibid at 4

[10] Cap C4 LFN 2004.

[11] Y M Salaudeen and T A. Atoyebi, 'Tax Burden Implication of Tax Reform' (2018) Open Journal of Business and Management, 2018, 6, 761-777 also available at <https://doi.org/10.4236/ojbm.2018.63058> accessed 10 December 2021.

This Tax is payable for each year of assessment of the profits of any company at a rate of 30%. These include profits accruing in, derived form brought into or received from a trade, business or investment. Also companies paying dividends to its shareholders are first obliged to pay tax on its profits at the companies' tax rate. Generally, in Nigeria Company dividends or other company distribution whether or not of a capital nature made by a Nigerian is liable to tax at source of 10%. However, dividends paid in the form of bonus share or scrip shares to individual shareholders are not subject to tax. Also, where a company is a shareholder in another company then such dividends are excluded from the profits of the company for the purposes of computation of the tax.

Companies doing business in Nigeria, other than non-resident companies (NRCs) are assessed to tax based on the preceding year basis. NRCs are assessed to tax on actual basis, except in the commencement and cessation years. NRCs are assessed to tax on actual basis without recourse to commencement rules. However, with effect from 2016 financial year, NRCs are to file their returns on the actual basis alternative versus filing returns based on deemed income. Every company must file a return based on income for the accounting year with the tax authority within six months of the end of the accounting year.

2.2. Tertiary Education Tax (TET)

The Tertiary Education Trust Fund (Establishment) Act, 2011 requires every company incorporated in Nigeria to pay 2% of its assessable profit as TET. In the case of oil companies, the tax is deductible for the purpose of computing Petroleum Profits Tax (PPT). The TET return is filed along with the relevant tax return (PPT or CIT). Non-resident companies are not subject to TET in Nigeria.[12] TET is payable by all Nigerian companies on assessable profit, that is, tax-adjusted profit before capital allowances. The relevant law is the Tertiary Education Trust Fund (Establishment, etc.) Act 2011. The highlights of the provisions of the act include: Tax is at the rate of 2% of assessable profit; All companies registered in Nigeria are liable to pay TET; NRCs and unincorporated entities are exempted from TET; The tax is on a self-assessment basis and usually assessed and filed together with company income tax; Failure to pay tax after two months of service of notice of assessment attracts a penalty of 5% of the tax.

If failure continues, N1, 000, 000.00 (One million naira only) or six months' imprisonment, or both, applies for first-time offenders, while a penalty of N2,000, 000.00 (Two Million Naira only) or 12 months' jail term, or both, applies for second-time offenders.

[12] KPMG, *Investment in Nigeria* (7th edn KPMG Advisory Services 2019) 64.

2.3, Personal Income Tax

The Personal Income Tax Act (PITA), Cap. P8, LFN 2004 governs the taxation of individuals. PITA subjects individuals to tax in Nigeria based on their place of residence. Generally, an individual may be deemed to be resident if he or she is domiciled, resides in, or sojourns in Nigeria. Furthermore, an individual may also be deemed to be a resident in Nigeria if they exercise their duties of employment partly or wholly in the country.

Non-residents will be liable to tax in Nigeria, where they hold Nigerian employment. A foreign national will become liable to tax where he exercises the duty of his employment in Nigeria and satisfies the following conditions jointly: their remuneration is borne by a fixed base of his employer in Nigeria; they are in Nigeria for 183 days or more in any 12-month period (including annual leave or temporary period of absence); their income is subjected to tax in a country which does not have a double taxation treaty with Nigeria. Some of the highlights of the provisions of PITA are as follows; self employed individuals are to pay tax by undertaking a self-assessment, while individuals in paid employment pay tax through the pay-as-you-earn system; the tax is levied on a graduated rate, with an effective rate of 19% due to available relief; reimbursement expenses, removal expenses, compensation for loss of employment, and gratuities are exempted incomes under the act; the consolidated relief allowance is granted to all individuals at 20% of gross income plus higher of N200,000 ($647), or 1% of gross income as relief; other allowable deductions are contributions to the National Housing Fund, National Health Insurance Scheme, life assurance premiums, pension contributions, gratuities, and interest on loan for developing an owner-occupier residential house; every employer is required to file a return for the preceding year showing all emoluments paid to employees, on or before January 31 of every year.

Individuals in self-employment are required to file a tax return for the preceding year within 90 days of the fiscal year (i.e., not later than March 31 of the corresponding year). Late filing of returns will attract a penalty of 10% and interest at the ruling bank lending rates.

2.4, Withholding Tax

WHT is an advance payment of income tax and is not a type of tax. WHT credit can be used to offset income tax liabilities. Tax withheld on interest, dividend, rent and royalty paid by a NRC or individual is final tax. WHT provisions are contained in all income tax acts (CITA, PITA, Petroleum Profits Tax Act [PPTA]), and other relevant regulations issued by the tax authority.

WHT rates range between 5% and 10%, depending on the nature of the transaction and the legal status of the entity involved.

2.5, Petroleum Profits Tax (PPT)

The PPTA governs the taxation of companies involved in oil exploration and production in Nigeria. The PPT is levied on the profits of a company engaged in petroleum operations (upstream activities) during an accounting period. The tax is administered by the Federal Inland Revenue Service (FIRS) now replaced by the Inland Revenue Service (IRS) by virtue of the new tax reform legislations. Some highlights of the provisions of PPTA include: PPT is levied at 85%. A lower rate of 65.5% and 50% applies to companies engaged in petroleum operations and still in their first five years of operations, and those involved in production-sharing contracts (PSCs) respectively; chargeable incomes under the act include proceeds and value of chargeable oil and related substances disposed by the company, except gas, plus any other incidental income arising from the company's petroleum operations; tax is payable on an actual yearly basis in 12 equal monthly instalments with a 13-month instalment payable in the case of an underpayment; the submission of estimated returns for an accounting period usually precedes the actual returns and must be submitted in a form prescribed by FIRS within two months of the fiscal year (i.e., not later than the end of February). Actual returns must be filed no later than May 31 of the fiscal year; late submission of returns attracts a penalty of N10,000 ($32.33) in the first instance, and N2000 ($6.47) for each day failure continues. Furthermore, late payment of tax attracts a penalty of 5% of the tax payable; Niger Delta Development Commission levy is payable at the rate of 3% of the annual budget of oil and gas companies operating onshore and offshore in the Niger Delta. The exemptions and/or incentives are as follows; dividend distribution is not liable to withholding tax; graduated royalty rates and lower PSC tax rates to encourage offshore production; TET is treated as a tax deductible expense for petroleum companies; gas income is taxable at a CIT rate of 30% while capital investment for gas are deductible as capital allowances against crude oil income at a higher PPT rate; Investment and annual allowances are capital allowances granted in lieu of depreciation.

2.6, ICT Tax

ICT Tax is payable by specified companies with turnover of N100m ($323,000) and above. The tax, when paid, is tax deductible for company income tax purposes. The tax is governed by the National Information Technology Development Agency Act 2007. The provisions are as follows: Tax is levied at 1% of profit before tax. Taxable companies include: GSM service providers and all telecom companies; Cyber

companies and internet providers; Pension managers and pension related companies; Banks and other financial institutions; and Insurance companies.

IT tax is assessed by FIRS and is payable within 60 days of service of notice of assessment. Non-payment of tax within the specified period attracts a penalty of unpaid tax plus 2% of the tax payable. Furthermore, where a penalty is not stated for an offence, then a penalty of N200,000 ($647) or one-year imprisonment, or both, applies in the first instance, while a penalty of N500,000 ($1620), or three years' imprisonment, or both, applies in subsequent instances.

2.7, Value-Added Tax (VAT)

VAT is an indirect tax governed by the VAT Act (VATA), Cap. V1, LFN 2007, as amended. VAT is administered by FIRS and it is charged at the rate of 7.5%. VAT is chargeable on supply of goods and services (including imported goods), except for items exempted in the first schedule of the act. VAT is substantially invoice-based. VAT payable is the difference between VAT on sales (output VAT), and VAT incurred on purchases or imports meant for resale (input VAT). By comparison, VAT incurred on fixed assets and administrative expenses are not allowable inputs, and should be capitalized or expensed.

A company is expected to register as a VAT collection agent within six months of commencement of the act or business, whichever is earlier. NRCs carrying on business in Nigeria are expected to register for tax using the address of the party they have a subsisting contract with in Nigeria. VAT on imported goods are to be paid at the port of entry, while the recipient of an imported service in Nigeria should self-charge the tax and remit.

VAT returns must be filed within 21 days following the month of transaction using the prescribed form. Failure to file VAT results in a penalty of N5,000 ($16.16) for each month the default continues.

3.0 Revenue Generation And The Nigerian Tax Policy Of 2017

Revenue generation through taxation is considered a necessity if the government must actualize the goals of economic prosperity. Equally, and on the other hand, tax incentives as an investment attraction strategy is also necessary especially for a developing country like Nigeria seeking to increase its FDI. According to research conducted by ActionAid Nigeria, countries lose an estimate of US$138 billion to tax incentive covers; tax holidays, tax-free interest, pioneer status, capital and investment allowances, tax-free dividends, duty drawbacks, import duty incentives on manufacturing equipment etc to mention but a few. A tax incentive usually causes a

serious drain on the national treasury by conferring windfall gains on corporations.[13] It is like pouring water into a basket or pouring sand in a container with a hole beneath, and expecting no leakages. For instance, incentives like tax allowances, deductions and credits do inflict loopholes on the tax system, which clever taxpayers may exploit.[14] The corruption prevalent in the country has also aided the abuse and misuse of tax incentives as revenue investment attraction. Herein lies the problem; the lack of a balance. The loophole in the tax system created by unmonitored incentives undermines the phenomenon of taxation as a revenue generator. This is the major problem, so how can balance be achieved?

The National Tax Policy 2017[15] has made a genuine effort to outline how balance can be achieved by stating that any incentive to be granted should be broad, sector-based, tenured and transparent. Implementation should be properly monitored, evaluated, periodically reported and kept under review.[16] Furthermore, the NTP 2017 states that revenue forgone from tax incentives or concession should be qualified against expected benefits and reported annually. Where the benefits cannot be qualified, quantitative factors must be considered.[17] The opinion of this writer, as expressed in this work is that the political will to translate these provisions of the NTP into cogent action is evidently lacking. In these two positions stated lies the missing piece to the jigsaw puzzle of balance which this essay seeks to solve. In order to sustain a balance, tax incentives should firstly, be tenured and transparent. The tenure must be strictly and religiously monitored so a corporation does not continue to enjoy what we call in local parlance *'awoof'* after the tenure has expired as this would be inimical to revenue generation via taxation. Transparency will definitely help create the much-needed balance but how possible is transparency in a sector rife with kickbacks and corruption? This is why at the beginning of this essay, it was emphatically stated that political will is also necessary to achieving a balance between revenue generation through taxation and investment attraction through tax incentives.

[13] D E. Oriakhi and P K. Osemwengie, "Tax Incentives and Revenue Productivity of the Nigerian Tax System" (2013) 1 (1) IJDES 31, 35

[14] Ibid at 34

[15] Federal Ministry of Finance, *National Tax Policy* (First Published: 2012, Federal Ministry of Finance 2017)

[16] Ibid at 4

[17] Ibid at 4

A balance could also be achieved if the One Stop Investment Commission (OSIC) and the Federal Inland Revenue Service (FIRS) in conjunction with any other sectors specific regulator could collaborate to regularly and periodically monitor, evaluate and review existing incentives, however they are described. Tax incentives are granted to achieve particular milestones or targets beneficial to the economy, once it is seen that these benefits or milestone have not been achieved or cannot be achieved feasibly, there is no need to extend the period for such tax incentive. Rather, there should be an immediate evaluation and review as to the continued utility of the said tax incentive. Even if the set target economic objective is achieved there must still be an evaluation comparatively with the current health of the tax system or framework. The NTP has already highlighted this challenge confronting the Nigerian tax system and marshals out key policy principles to address them. The main thrust of the NTP is to establish fundamental objectives and principles to guide an orderly development of the Nigerian tax system towards meeting its overall objectives.[18]

4.0, Ten (10) Major Changes/Reforms Introduced By The Tax Reform ACTS

4.1, New Tax Band and Rates for Individuals:

The new format is that those who earn higher income are susceptible to higher tax rates in percentage. Section 58 of the Nigerian Tax Act (NTA) 2025 provides that:

> The income tax payable on the chargeable income of an individual, other than an individual earning the minimum wage in line with the Minimum Wage Act in respect of each year of assessment, shall be as specified in the Fourth Schedule to this Act[19].

The said fourth schedule mentioned, carries a calculation of some figures that show possible rates for specific amounts. These amounts have been derived and made into a table that serves as an example for easy reference.

4.1.1, Individual Income Tax Rates

After the relief allowance and exemptions has been granted in accordance with subsection (1) of Section 30 of the Nigeria's Tax Act, 2025, the taxable income ascertained shall be taxed at the following rates:

[18] Ibid at 13

[19] The Nigeria Tax Act, 2025, Section 58.

S/N	INCOME	RATE (%)[20]
1.	First – ₦800,000.00	0%
2.	Next – ₦2,200,000.00	15%
3.	Next – ₦9,000,000.00	18%
4.	Next – ₦13,000,000.00	21%
5.	Next – ₦25,000,000.00	23%
6.	Above – ₦50,000,000.00	25%

4.2 Creation of the New Nigerian Revenue Service (NRS):
The second most obvious reform has to be the creation of the Nigerian Revenue Service (NRS) to replace the Federal Internal Revenue Service (FIRS) as the Central Body (Tax Authority) over the entire federation. The NRS must now be the hammer that enforces all tax matters in compliance with the new laws.

4.3 Tax Identity Cards (ID) Requirement by Financial Institutions:
It is a requirement under Section 8 of the Nigerian Tax Administration Act (NTAA), 2025 that financial institutions are required to demand a Tax ID from every person first of majority age who is a taxable person. Consequently, both individual and businesses may likely face restrictions on financial transactions and enforcement actions[21]if they fail to comply with this provision.

On the reverse side, financial institutions who fail to comply with Section 8 of the NTAA by making such demand and keeping appropriate records may be porous to sanctioning by the new NRS referred to above.

4.4 Harmonization of Old Tax Framework:
The harmonization of the plethora of tax laws helps tax payers and business owners to be better acquainted with the requirements regarding rate of taxes levied and procedures to follow.

To better appreciate the monumental nature of this reform it is important to mention a few of these laws that have been caught in the web of consolidation: They include: The Capital Gains Tax Act, Petroleum Industry Act, Customs, Exercise Tariffs, etc. (Consolidation) Act., Nigeria Start Up Act, Personal Income Tax Act, Companies

[20] Table created from 4th Schedule to the Nigeria Tax Act, 2025. Cross reference the 4th Schedule with Section 58(1) of the Act.
[21] Nnamdi Oragwu & Others, *The Nigerian Tax, Reform Acts 2025: An In-depth Guide for Business Investors, and Taxpayers* (Punuka Attorneys & Solicitors, 2005).

Income Tax Act, Income Tax (Authorized Communications) Act etc. In fact, it can be stated that no single law that have relation to tax was left untouched.

4.5, Residence of Taxable Individuals - Redefinition:
When an individual resides in Nigeria although an expatriate, or performs duties in Nigeria, he shall be subject to personal income tax remittance especially if that person is not already paying tax in their home country.

4.6, Broadened Definition of Income Taxable:
Section 4 of the NTA 2025 has significantly expanded the definition of income changeable to tax making the category broader. Now, even earning from lottery and gaining operations is subject to taxation.

4.7, New Corporate Tax Thresholds:
Small businesses are granted tax relief or exemption from company income tax to encourage speedy growth while the corporate tax brackets have been expanded for corporations. Currently, medium and large companies are changeable by 30% while small companies with revenue above ₦100,000,000 (One Hundred Million Naira) but below ₦250,000,000 (Two Hundred and Fifty Million Naira) are changeable at 0%. On the other hand, the multinational companies are affected as they must now pay 15% on aggregate group turnover of £750,000,000 (Seven Hundred and Fifty Million Euro).

4.8, Enlargement of Withholding Tax Base:
Withholding tax before now was rampant in property transactions. However, entertainers, consultants, athletes etc will now have their payments subject to withholding tax at source. All payments to non-resident providers of technical, professional, and consulting services by Nigerian start-ups will be subject to 5% withholding on such fees.

4.9, Whistleblower Incentives:
To encourage full scale recovery individuals can now report and be rewarded. Section 69 of the NTAA 2025 allows the Nigeria Revenue Service (NRA) or the State Equivalent (State IRS) to protect the confidentiality of informants and use such information for recovery.

4.10, Capital Gains Tax Rate Increase:
CGT rate was 10% before but has now been increased to 30% for companies effectively aligning the CGT and companies income tax rate reducing any arbitrage previously enjoyed.

These are the few most prominent changes every business owner should watch out for and consult tax experts or attorney for further clarification.

5.0. Conclusion

A balance between revenue generation through taxation and investment attraction through tax incentives can be achieved by providing the right environment, legislatively, fiscally, commercially and financially. This could be by tax reform not just at the federal level but also at the state and local government levels. Lagos State has been a trailblazer on many fronts especially about wooing investors' and creating awareness of the importance of revenue generation through taxation, more can still be done to create the right environment. The essence of tax reform in both developed and developing countries of the world is the reduction or eradication of fiscal deficits through appropriate restructuring of the tax system to attract higher revenues or to improve the revenue elasticity or buoyancy of the tax structure.[22] So tax reforms can create the right environment which in turn creates the balance between revenue generation by taxation and investment attraction through tax incentives. In Nigeria where there is massive dearth of infrastructure,[23] chronic poverty, and an army of unemployed youths, it is imperative to block the loopholes created by tax incentives poorly monitored over the years or to put it mildly; corruptly handled over the years. There is no easier way to generate revenue than by taxation and any argument to the contrary would fail, consequently, an effective tax system must be created. It is Crystal clear that the old regime of taxation and tax regulation in Nigeria needed an upgrade hence these reforms introduced by tax legislations is timely. The paper therefore recommends effective implementation of the new tax reforms by government at all levels and by relevant institutions, a monthly publication on Internal Revenue Service website to track compliance to the legislations as well as public enlightenment on tax laws.

[22] D E. Oriakhi and R R. Ahuru, "The Impact of Tax Reform On Federal Government Revenue Generation in Nigeria" 2014 9(1) JPDS 94.

[23] Ibid at 94.