Could NTP be a Competitiveness Tool for Nigeria?

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On March 30 2010, this column commenced review of the ***National Tax Policy 2010's*** first 3 chapters. I focus this week on ***Chapter 4*** and ***Appendix 2 -Tax Strategy for Nigeria (TSN),*** which *"maps out the way in which the (NTP) would be implemented' and complements 'the strategy to grow the Nigerian Economy by an average of 10% per annum."*

Chapter 4, titled ***'Taxation as a Tool for Wealth Creation and Employment,'*** declares: *"where the tax system creates a competitive edge for investments in the economy, local investments would be retained.... while also attracting foreign investments. Increased investment would generate employment and provide wealth in the hands of individuals."*

A key plank is the ***'Shift from Direct to Indirect Taxation for Economic Growth' (section 4.3)***, whereby *"current structure.... over time, has created lopsided over-dependence on oil taxes.... Oil revenues are no longer viewed as a sustainable source of revenue and..... urgent necessity to diversify tax revenue."*

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TSN documents Government's strategy to reduce CIT (Companies Income Tax) rate to about 20% and decreasing *"the top rate of PIT (Personal Income Tax) to about 17.5% of taxable income."* There would be no significant differences in the CIT and PIT rates, *"in order to limit opportunities for tax avoidance."* Interestingly, TSN posits Nigeria can *"afford to lower its tax rates to achieve a competitive advantage"*, given its oil resources *"which enable the country to finance Government expenditure without significant recourse to revenue from other sectors."* It cites a study showing that Ghana (24%), Kenya (39%) and South Africa (55%) *"rely heavily on income taxes"*, compared to Nigeria's 15% of overall tax revenue.

TSN recognises that *"there are peculiar challenges in the Nigerian investment environment, such as infrastructure which may negatively impact investment decisions...... in the short to medium term.... the tax system should allow business entities higher after-tax profits to compensate for the investment risks."*

"Conversely, greater reliance on indirect taxes may occasion an upward review of such taxes....to sustain Governments' revenue base and makeup for any potential shortfall from any reduction in direct taxes.... Indirect taxes such as VAT have over time, offered a more regular revenue inflow, lower compliance cost, with a huge prospect for improved tax compliance.

To cushion the effect of any proposed increase in VAT rates on the cost of essential goods and services, Government should first improve efficiency in VAT administration, correct anomalies in the VAT....and introduce the concept of the threshold to protect low income earners." TSN thus proposes expanding the list of VAT exempt or zero-rated goods and services.

The NTP recognises *"that any increase in VAT....would be in line with the country's regional and economic commitments and....must not overburden taxpayers...."* TSN cited a

2006 study of 8 West African Countries showing that Nigeria has the lowest VAT (5%), followed by Ghana (15%), five other countries (18%) and Niger (19%). This would seem to inform recent/ongoing effort to increase Nigerian VAT to 10%through proposed amendment of the VAT Act.

It is noteworthy that strident opposing views greeted the 2007 attempted Ministerial increase in VAT further to ***section 38(a) VAT Act***.

Section 4.4, Special Arraignments to Attract Investments, recognises that *"as a general rule, every taxable person, entity or activity should be subject to tax in Nigeria, subject to specific exceptions" "where a special dispensation may be created ....in order to attract, retain or increase investment in that particular economic activity."*

Thus on ***Tax Free Zones (TFZs, section 4.4(a))***, *"the Executive and Legislative should work closely to identify new areas, where such special arrangements are required and pass necessary legislation to create them. The status of such TFZs and the benefits accruing therefor must be subject to periodic review and a system put in place for measuring.....the direct benefits being derived from the zone in contrast to the tax revenue not being collected"* This exemplifies the *"30 silver coins"* paradox, and would hopefully be a departure from non-implementation of provisions like ***section 4(g) NEPZA Act*** on *"recommendation to the Federal Government of additional incentive measures for the Zones"*, which could have only been performed on the basis of scientific data.

Another plank is ***'Tax Incentives' (section 4.4(b))***: *".... Government may provide tax incentives to specific sectors or.... activities...to stimulate or retain investment in the sector. Tax Incentives should however, be carefully considered before they are granted in view of the argument that they may be viewed as violating some principles of good taxation...it is generally perceived that incentives:*
(I) discriminate in favour of a particular sector;
(ii) require imposition of a heavier tax burden on other sectors...;
(iii)complicate the tax system due to the additional cost and time required to monitor the beneficiaries of such incentives in order to avoid possible abuse; and
(iv) may not be beneficial to the economy especially where the tax forgone exceeds the anticipated benefits from granting the incentives."

".... The process of granting and renewing incentives, waivers and concessions must be transparent, and sector focused...[n]or only granted to specific companies or individuals only. The Government may also seek input from relevant sectors of The Nigerian Economy and populace in the determination of the desirability or otherwise such incentives" "which must comply with applicable legislative provisions."

Regarding ***International and Regional Treaties (section 4.4(c))***, FIRS (with Federal

Ministries of Finance/Foreign Affairs) *"shall be responsible for the negotiation and conclusion of ...these treaties and shall ensure that they provide the maximum benefit to the Nigerian Economy."* JTB is also *"expected to play a critical advisory role in the negotiation of such treaties...,"* whilst *"Nigeria should reserve the right...to cancel any arrangements which are no longer beneficial to its economy...."*

The NTP also aims at ***'Creating a Competitive Edge' (section 4.4(d)),*** by using *"the tax system....to create a competitive advantage for retaining and attracting investments"* to Nigeria through the following measures:

(I) ***Reduction in the Number of Effective Taxes:*** *"a simple and efficient tax system is usually attractive to investors and is a major consideration when making an investment decision";*

(ii) ***Avoidance of Internal Multiple Taxation****: "...the provisions of the* ***Nigerian Constitution*** *on tax matters and the* ***Taxes and Levies (Approved List for Collection) Act*** *should be strictly complied with by all tiers of Government. The JTB (Joint Tax Board) should ensure the co-ordination of all levies, fees, tolls, rates and charges across States in Nigeria to avoid multiplicity";*

(iii) ***Liberalisation of the Tariff Regime****: "Customs administration... shall be strengthened and continuously specialised to meet the needs of the...CET regime";*

(iv) ***Use of Tax Incentives to Diversify the Nigerian Economy:*** *"so that Nigeria is no longer viewed as a mono-product economy and other sources of revenue can be maximised";* and

(v) ***Strengthening the Oil and Gas Sector****: "Government shall continue to develop the...sector and enter into agreements, which shall be beneficial to the Nigerian economy and create lesser burden on taxpayers in other sectors. In this regard,* ***greater emphasis shall be placed on PSCs and other similar arrangements, which provide a more favourable tax regime to the Oil and Gas companies..."***

Conclusion:

Section 4.4(d)/Chapter 4 concludes that: *"...the above list is not exhaustive; accordingly Government shall explore all possible avenues for creating a competitive edge for the Nigerian Economy..."*

One can hardly fault this noble statement of intent. I will conclude the NTP review in the next issue.

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