

IMPLICATION OF COVID-19 ON TAX OBLIGATIONS

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INTRODUCTION

A healthy nation they said is a wealthy nation. Good health is central to human existence and well-being. It makes an important contribution to economic progress, as a healthy population tends to be more productive. This assertion has been able to prove itself to the entire universe as a result of the outbreak of Corona virus also known as covid-19 that first surfaced in China in the later part of 2019 which has found its way to over 207 countries with confirmed cases of over 976,249 infected people and 50,489 deaths as at the time of writing this article¹ and has thus become a global pandemic.

While searching for the cure to Covid-19, governments across the world have taken necessary steps to reduce the spread of the virus both at the national and international level, through restrictions of movement, prohibition of social gathering and eventual shutting down of cities. These measures have invariably affected the global economy at large as domestic and international trade, business and other forms of international relations have been reduced to the barest minimum if not brought to a complete halt. This has a lot of implications on Nigerian citizens including their tax obligation which is the primary concern of this article.



1. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

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TAX AND TAX OBLIGATION

Tax is a compulsory financial charge or levy imposed on a taxpayer by government and administered by government agencies. It is a mandatory obligation on citizens to their country and failure to discharge this obligation attracts penal sanctions. The Court emphasizing on the duty of Citizens to pay taxes in the case of **Best Children International Schools Limited V. Federal Inland Revenue Services**² stated as follows:

“The duty of a citizen to obey, oblige and comply with the laws of the land is as fundamental and concomitant with the duty of a citizen to pay taxes.”

Compliance with payment of tax is essential to the development of an economy as it forms one of the major sources of revenue to the government which the government in turn uses for the benefit of citizens as a whole.³

There are various types of taxes levied on taxable persons in Nigeria including, Value Added Tax, Personal Income Tax, Companies Income Tax, Petroleum Profit

Tax, amongst others. However, in the wake of COVID-19, what becomes of the obligation of taxable persons in respect of these taxes?

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As has been stated earlier, the obligation to pay tax is germane to any economy as it forms part of the revenue available to government for discharging its responsibilities to citizens. In the same vein, citizens have a duty by law to ensure tax is paid when due.

In the wake of the pandemic resulting in measures and policies which have occasioned a drastic decline and change in all sectors of the economy, taxable persons in Nigeria are still mandated and required to fulfill their obligation to pay tax. This is because, a careful perusal of the laws governing taxation in Nigeria disclose no provision for waiver of taxes in emergency situations as that brought by the pandemic. It is also noteworthy that no law makes provision for waiver of penalties attached to non compliance with the time required to pay tax.

2. (2018) LPELR-46727(CA)

3. <https://www.britannica.com/topic/taxation>

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Notwithstanding the fact that payment of taxes is still mandatorily required, the obligation to pay tax is contingent upon the generation of the taxable income by taxable persons in the first place.

For instance, Personal Income Tax is chargeable out of aggregate amount of income of taxable persons, subject to exceptions provided by the law.⁴ This type of tax is paid in 2 ways:

1. Pay-As-You-Earn (PAYE) – this is how people in paid employment pay their taxes. The employer deducts the tax at source.
2. Self assessment by self employed persons – if self-employed, you assess your taxes, and pay the amount directly to the relevant tax authorities.

The implication for the payment of this tax amid Covid-19 is that, a taxable person who does not earn or make any income following close of business or loss of employment in view of the harsh reality of the pandemic, will not be obligated to pay this tax.

This in turn implies reduced personal income tax revenue for the Government.

Furthermore, Value Added Tax is tax payable on goods and services consumed. By law, monthly returns of this tax are required and are to be filed not later than the 21st day following the month of transaction. Being a tax based on taxpayers' consumption rather than their income, it is expected that once there is no supply and demand for VAT-able goods and services, there would be no obligation to file returns of Value Added Tax. Already, consumption of VAT-able goods and services in Nigeria has fallen radically and continues to fall as a result of the declared lockdown and social distancing measures in place to contain the pandemic within affected States. This implies a drastic reduction in Value Added Tax for the Government as people basically spend on essential goods and services whilst foregoing the need for VAT-able non-essential goods and services.

Obligation to pay Companies Income Tax on the other hand seems to be unaffected by the pandemic.

4. Section 3 Personal Income Tax Act, Cap. P8 LFN 2004 as amended in 2011

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This is because, according to the Companies Income Tax Act,⁵ such tax is payable either out of profits made by companies or out of gross profit or net assets or paid up capital or turnover of the companies where no profit is made by the company. Thus, the implication of the above is that taxpayers are liable to pay their taxes once the obligation arises regardless of whether profits are made or not.

Similarly, obligation to pay stamp duty remains unaffected as it becomes payable on any agreement executed in Nigeria or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. Thus, as long as transactions for which stamp duty applies continue to pull through, the obligation to pay when due (either within 30 or 40 days of first execution of the instrument) arises and subsists until fulfilled. It is however doubtful, that all taxpayers would strictly comply with payment of this tax in view of the restrictions on movement on-going in affected States within Nigeria.

Admittedly, as can be gleaned from discussion above, the impact of the Covid-19 pandemic on tax obligations differs depending on the type of tax for which the obligation has arisen. As has been discussed, it will seem that the obligations to pay Value Added Tax and Personal Income Tax are more affected than that in respect of Companies Income Tax and Stamp Duty. This position remains same for other kind of taxes not discussed.



5. Section 9(1) Companies Income Tax Act, Cap. C21, LFN 2004 as amended in 2007

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PALLIATIVE MEASURES ON TAX PAYMENT IN RESPONSE TO COVID-19

The Nigerian Government just like some other countries in the world affected by the outbreak of Covid-19 has felt the need to alleviate the burden of tax payers by providing certain palliative measures on tax payment.

Accordingly, the Federal Inland Revenue Service on 23rd March, 2020 announced the extension of time for filing Value Added Tax and Withholding Tax from 21st day of the month to the last working day of the month, following the month of deduction.⁶ Also, the due date for filing Companies Income Tax returns has also been extended by one month. In addition, taxpayers are given the privilege to file returns using unaudited accounts but must subsequently submit audited accounts within two months after the revised due date of filing.⁷

At the state level, the Lagos State Internal Revenue service has extended the deadline for filing of annual tax returns for employees and self-employed persons by two months from 31 March 2020.⁸ It is expected that soon, other states in the country will follow suit. It is also commendable that the National assembly has passed the Emergency Economic Stimulus Bill, 2020 in response to implication of the pandemic on citizens including their tax obligation.



6. <https://www.proshareng.com/news/Taxes%20&%20Tariffs/FIRS-Grants-Tax-Concessions-in-Response-to-COVID-19/50059>

7. Ibid

8. <https://taxaide.com.ng/2020/03/31/lirs-extends-deadline-for-filing-of-annual-returns-to-may-31-2020/>

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ADEQUACY OF PALLIATIVE MEASURES ON TAX PAYMENT IN RESPONSE TO COVID-19

It is commendable that the Nigerian government has taken steps to relieve the burden of taxpayers during this difficult time. However, a careful look at the palliative measures disclose that the concessions are of short term effect and inadequate to cater for the long term impact of COVID-19 on taxpayers which other countries have reasonably contemplated and reacted to. For instance, the Switzerland government on 20th March 2020 announced additional tax reliefs to taxpayers by stating that businesses may extend payment periods for value added tax (VAT), customs duties, special excise taxes, and incentive taxes, without having to pay interest on late payment from 21 March 2020 to 31 December 2020.⁹

The United States of America has enacted a law known as Relief for Workers Affected by Corona Virus Act.

Section 2302 of the Act allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022.¹⁰

Similarly, Andorra on the 1st of April, 2020 published in their official gazette the Omnibus Law passed as urgent measure in response to the effect of Covid-19. The Law provides for deferral of payment of tax due arising from tax returns submitted to the tax authority independently if the taxes due are in relation to personal tax debts, payment of withholding taxes or other tax obligations independently of their nature.

9. <https://home.kpmg/us/en/home/insights/2020/03/tnf-switzerland-tax-measures-response-coronavirus.html>

10. Section 2302



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CONCLUSION & RECOMMENDATIONS

It is without doubt that Covid-19 has implications on tax obligations. While the government has taken measures to alleviate the burden on taxpayers caused by Covid-19, the government must endeavor to improve on their¹⁰ palliative measures because given the rising number of covid-19 positives on a daily basis, the tendency is high that the lockdown would be further extended and business would further crumble to its barest minimum. Even where there is no extension of lockdown by the government, it would still take taxpayers a lot of time to recover from the losses incurred as a result of the outbreak of the virus. Hence, to avoid inevitable multiple cases of tax violations and infractions by taxpayers, the government should toe the path set by other countries by providing adequate palliative measures for taxpayers.

Having duly considered the impact of covid-19 on the taxpayers, it is recommended that the Nigerian Government should;

1. further extend the deadlines for filing of tax returns;
2. Waive the penalty for late filling of taxes and duties for a minimum of 6months to reduce the financial burden on taxpayers;
3. Defer payment of Companies Income taxes for at least a period of one year, for the taxpayers to put into productive use the monies which would have been used to settle tax debts;
4. Provide tax credits to taxpayers, especially companies engaging in the production of non-essential commodities;
5. Sensitize businesses on importance of pandemic insurance policy.

