TAX LAWS AND SECURITY AS OBSTACLES TO FOREIGN DIRECT INVESTMENT

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Abstract

Critical factors that encourage influx of foreigners to invest their capital in a country are there current laws, security and tax policies. This study examined tax laws and security as obstacles to Foreign Direct Investment (FDI) in Nigeria, at the moment when multinational companies are closing shops or businesses and relocating to nearby countries where tax laws are favorable, due to hash tax laws of the current Nigerian regime. In carrying out this research, a qualitative method or approach was used. This research is a thorough analysis of the existing works, books, economic reports and policy documents. It was discovered that Nigeria is one of the country that charges high corporate income tax compared to its neighboring countries. This high corporate income tax reduces the amount of profit after tax of foreign companies. The application for pioneer status of companies and the procedure for the approval can be lengthy and burdersome, hence discourage FDI inflow into the country. It was discovered also that the worsening security situation in Nigeria due to the activities of Bokoharam, Fulani hader, kidnapping, arm banditry, militancy is responsible for the discouragement of FDI. On the aspect of law, the Local Content Act breaks national treatment found in bilateral investment agreement between Nigeria and other countries. In addition, intellectual property laws are not effectively enforced, making it difficult for foreign investors to protect their rights. This paper recommends that, government should reduce Corporate Income Tax rate, increase of tax holiday period and provide adequate security to stop bokoharam, kidnapping, armed bandit to attract FDI.

Keywords: Corporate income tax; Foreign Direct Investment; Laws; Nigeria; Security

1 Introduction

Countries that depend solely on crude oil sales as their main source of revenue and enhancement of economic growth will certainly have difficulty when the prices of crude oil dwindle in the world market [1]. It is observed that countries with only one source of revenue particularly those that rely only on revenue generated from crude oil to grow their economy would remain exposed to changes, expecially a decrease in price of crude oil. Hence, there is the needs for investment into the different sectors of those economies in order to diversify and absorb shocks on oil volatility. In the bit to diversify, government of such countries have to persuade investors to attract investment inflows or FDI, by providing security, stable and attractive fiscal policies (tax policies). Establishing a legislation and regulation, environment that will wore and bring FDI [2].

Foreign Direct Investment (FDI) is seen to be an essential private external source of finance for countries that are growing like Nigeria. [3] It is also stated that FDI is considered a main source of funds used to bridge the gap produced by a deficit of funds to be generated for domestic investment [4]. Therefore, FDI is an investment carried out by an enterprise that is totally or partially owned by foreigners. Foreign direct investment is regulated in Nigeria through its investment laws, technology, technology transfer law, foreign exchange law, company law, sector specific regulation and international agreements [4] in order to attract foreign direct investment in Nigeria. Unfortunately, some of our taxation policies and laws in the country serve as a challenge or barrier to attract foreign direct investment most especially in this present dispensation of Bola Ahmed Tinubu [5]. These challenges included taxation policies, laws and administration, security and lack of adequate infrastructures to encourage foreign direct investment and domestic investment. The challenges has contributed in preventing FDI and local investors to invest and those who have invested before are divesting.

This shows that the investment cloud in Nigeria is discouraging foreign direct investment due to multiple and unstable tax policies, laws, political and security situation in Nigeria. This research is important most especially in this period where there are many obstacles or challenges that hamper the attraction of foreign direct investment in Nigeria. Moreover, this study differs from other related studies in Nigeria like [6] who considered the reason why some Nigerian enterprises decided on foreign direct investment and their level of success [7]. The contribution of tax incentive toward the flows of FDI and the effect of such inflows on the Nigerian economy [8]. The appraisal of pioneer status incentives on FDI in Nigeria. [9] Considered the Nigerian treaty network and its impact on foreign direct investment. Similarly, [10] it discusses the influence of Company Income Tax (CIT), excise, and custom duties on FDI, [11] explored taxation and FDI and taxation were proxy by Value Added Tax (VAT) and CIT. Moreover, the above studies used quantitative research. This study used qualitative research and documentary analysis. Nonetheless, the major goal of this study is to examined tax laws and security as obstacles to FDI in Nigeria. This research assessed tax laws and security as obstacles to FDI in Nigeria, This paper is classified into five sections: section one is the introduction, section two deals with literature review and conceptual framework, section three explains the research methodology of the study, section four discusses the discussion of results and section five conclude the paper.

2 Literature Review

Foreign Direct Investment is a resource allocation by individual and corporate entities in a country for business interests sited in other countries. It also occured when a foreigner open a new business or company in a country that is not his own [9]. Empirical literature on FDI has revealed the role taxation policies, security andS laws of a country play in attracting FDI. This is because FDI has many role to perform in improving the economy of developing countiries. Empirical literature usually shows the the needed space in the knowledge gap created to be considered and filled, hence, gives direction for the study. Therefore, Ike [7] had assessed the impact of tax incentives on FDI in Ghana, Nigeria and South Africa and considered the effects of those flows in those countries. The results showed a positive association of tax incentiveon Foreign Direct Investment and that FDI has no significant influence on export in Ghana, Nigeria and South Africa. This means that decrease in corporate tax rate and increase in tax incentives will increase FDI and exports. Nkwanko et al. [8] Concluded that pioneer status application and approval procedure is drawn-out, but the process is cumbersome. Nkwanko et al. Add that, in corporate taxation potential investors who requires prompt decision-making and assurance before investing may be discouraged. Moreover, there are instances where pioneer status programs are interpreted differently by government agencies, thereby creating confusion and impairing investment choices. Appiah-Kubi et al. [12] examined the effect of tax incentives on FDI on African economy from 2000-2018, using econometrical model. The findings indicated that FDI responded to lower CIT. That is FDI predominateS in Africa with long tax holiday and withholding tax, and concluded that achieving poverty reduction and sustainable growth and development, women empowerment will be hindered if proper restructuring of tax incentives to deal with policies lapses by the government are not carried out.

Oyeabo et al. [13] looked at the influence of CIT on FDI in Nigeria. The research design adopted was ex post facto. The results showed education tax and Petroluem Profit Tax (PPT) to have an inversed effect on FDI. Also, the result disclosed a direct influence of CIT on FDI. [14] Thus, an investigation was carried out on the impact of direct tax on FDI in Nigeria, especially the influence of Petroleum Profit Tax, CIT, education tax and Personal Income Tax on FDI. The study disclosed PPT, CIT, and Personal Income Tax (PIT) to have a significant and positive effect on FDIt. However, the outcome of the results between Education tax and FDI is negative [11]. The nexus between taxation and FID was examined in Nigeria. Time series and econometric method was adopted in the data analysis. The results disclosed CIT to have a significant and negative effect on FDI. This showed that an increase in CIT rate leads to a decrease in FDI inflow in Nigeria.

The above discoveries justified why foreign investors do not want to invest in Nigeria and those who have invested are divesting in order to go to countries with low CIT rate. The studies revealed that CIT has a direct effect on FDI. This shows that increase in CIT rate leads to a decrease in FDI in Nigeria as stated in Olakoaga and Osagie, Ali [11], [7].
Similarly, empirical literature on FDI have revealed the role a country's security and law play in attracting FDI. Thus, Alawi and Ali [15] observed that the prevalence of administrative and financial corruption, sagging infrastructures, lack of political and security stability and technological backwardness are obstacles to FDI and domestic investment too [16]. Al-Mahdi and Fisal states the challenges for local investments commission and development solution to encourage FDI in local governments in Irag. The research used mixed method approach and discovered legal, security, weak incentive, administrative challenges and guarantee given by the national investment law in Irag [4]. The research observed a significant effect of national security on FDI in Nigeria and recommended that the Nigerian government should ensure that expenditure on internal and external defense is well utilized appropriately to reduce insecurity to pave way for foreign investors in the country.

[17] The reasons Irag is regarded as the worst place to do business are corruption, lack of security, an unequipped banking system, lack of transparency, intellectual property rights issues, and disputes over oil rights and undeveloped arbitration law. Al-Azzawi and Dulaimi [18] Tried to classify some of the challenges and obstacles of FDI in Iragi and concluded that foreign direct investors do not want to enter the Irag market due to expulsive investment environments such as insecurity, law and corruption. Hence, Kazar [19] observed that feeble balance pave way for the government to start developing agenda with emphasis on creation of sustainable development plan for the future. The Irag economy most have to be diversify into other sectors of the economy like energy manufacturing of goods and service and energy. This was a broader vision for the resurgence of Irag economy which contributes to the attraction of FDI. Al-Ekhatorand Ayinwe[20] Explored the laws that governed investors investing in Nigeria and uses doctrinal approach to discovered FDI to have positive impact on the various sectors of the Nigerian economy. Thus, the laws regulating the different sectors should be amended to be in line with present realities or globalization. It also, shows that lack of security and law government FDI hinder the inflows of foreign capital into developing economy. Gawzan and Alsamee [2] Used doctrinal research approach and data collected through secondary sources. The research concluded that the provision of information to foreign investors to enable them invest in Irag economy is lacking. And discovered that the draft law on the right to information of 2012 did not contain an article that allow investors right to obtain information they want in relation to laws to invest in Irag. Thus, the study used documentary research and considered the combination of the implications and obstacle of security, law and tax policies on foreign direct investment in Nigeria.

3 Research Methodology

This research adopted a qualitative research design where data were gathered through secondary source and analyze qualitatively. The documentary research involved the analysis of economic reports, reserch articles from journals, existing literature and policy documents. The literature involves a review of literatures, academic articles other relevant publications. The policy documents included contemporary and historical evidence that was also scrutinized to gain a thoroughly understanding of the regulatory framework, policy shift and government initiative that can affect FDI as it is in Kazar [19]. This method was selected because this kind of research involves review, analysis and critism. Data were collected from the first source that was legal document and the second source such as law papers, books and reports as it is in [2].

4 Discussion of Results

The discussion of results on tax policy obstacles to FDI in relation to CIT is that high CIT rate is a drawback to the coming in of FDI into Nigerian economy. Normally, countries that lower their CIT rate serve as an incentive, which give foreign investors opportunity to invest knowing fully that the tax expenses in profit is not much. In Nigeria, the CIT rate is one of the highest in West Africa which is 30 percent of income of corporate organization operating in Nigeria. Followed by Ghana, Senegal, Liberia and Guinea with 25 percent, this is the second highest. Mali, Burkina Faso and Gambia have the lowest rate of 20 percent [12]. This signifies that high CIT rate has been one of the Nigerian greatest obstacles to the coming into the country of foreign investment and hence, investors prefer other West African countries with low CIT to invest and make a huge after tax profit.

Another obstacle to FDI in relation to tax is the tax holiday. Tax holiday is usually giving to industries that are qualified to be be called pioneer companies to be exempted from the payment of CIT for some limited period. Newly established firms are exempted from paying CIT for a specified period [8]. Foreign companies or investors are encourage and always willing to invest in countries with a high maximum number of years as tax holiday. The tax holidays in Nigeria, is the lowest with a minimum of 3 years and a maximum of five years when compared with other West African countries like Senegal, Cote d'ivoire, Ghana and Liberia with a minimum of 5 years and a maximum of 10 years [8], [21]. This shows that Nigeria has the lowest tax holiday period. Thus, the lower tax holiday period serves as an impediment to the attraction of inflows of FDI in Nigeria and hence, investors are discourage to come to Nigeria as a result of that, and prefer to take their investment to those countries with longer period of tax holiday period. Thus, [12] concluded that Foreign Direct Investment flows majorly to African countries with long tax holiday and low rate of withholding tax and VAT. This is what usually enticed the foreigners to come and invest in those countries. Therefore, African nations with low tax holidays and high VAT and withholding tax should try to increase their tax holiday and reduce VAT and withholding tax rates, if they want there countries to be a destination for foreign investment choices in their economies.
The results discovered that security and political stability are fundamental factors in making investment decision or attracting foreign direct investment inflow in a country. The security environment in Nigeria is characterized by serious threat of insurgency, violent extremist groups and heavily armed militia activities in Nigeria. Such as the bokoharam, Fulani herders, armed bandits, Niger Delta militant, and kidnappers remain very active in committing criminal acts. This

has given birth to unstable business environment hence; Nigeria remains one of the world dangerous place to invest and to do business with great fear of occurrence of violence, crisis, destruction of life and properties and political instability always. Thus, investors are or will not like to risk bringing their capital and expertise in Nigeria unless they are assured of the security of their life, properties and an economy that is stable devoid of political instability. And those who have already invested are divesting daily. The lack of the security of life and properties, poor economic policy and the current unstable political situation in Nigeria contributed in hindering many investors to come and invest. This has led to loss of investment in to Nigeria and the inability of the economy to grow and development [22]. [4] This shows that national security has direct effects or encourages and attracts FDI in any nation.

Law and FDI: presently, there is no definate or specific legal instrument or document that deals with Foreign Direct Investment in Nigeria. The law for the establishment, protection and promotion of FID are containing in so legal instrument and many fiscal policy guidelines.. These are Companies and Allied Matters Act (CAMA), security and exchange commission and Nigerian investment promotion commission. Thus, Nigerian investment promotion commission presently Act No. 15 of 1995 (NIPC) as amended in 1998 is the major law regulating FDI in Nigeria. The main aim is to stimulate foreign and local investment [23]. Unfortunately, NIPC is a general legislation on investment rather than law and statutes created to guidelines for investors tobring their investment in Nigeria.

Local contents Act as an obstacle to FDI in Nigeria. The government of Nigeria enacted the local content Act 2010 which gave the indigeneous companies on the oil and gas industry power to control a minimum of 50 percent in oil and gas projects. The act gave Nigerian oil companies to be the main players in giving oil fields and licenses in any subsisting contract in oil and gas sector. The Act, has the responsibility of putting in place a policy guide for continuance and growth of Nigerian local content in the economy through a balance programmed of planning, motoring, target setting, creating jobs and improving contractors capability. Unfortunately, it is observed that the local contents Act is against other clauses in investment obligation, national treatment and international agreements. [24]. Moreover, the World Trade Organization is one of the international agreements that the local content Act provision contravenes. In addition, [24] it is argued that the local content Act is not in tendom with national treatment put in bilateral treaties on investment as it concerns Nigeria. This shows that the local content Act has to be altered to be in-turn with the current economic realities accentuated by globalization. The inability to amend this law has contributed in limiting the influx of FDI in Nigeria. [20] A close examination of laws that government various sectors of the economy disclosed that many laws are besotted with some limitation or obstacles that impede the meaningful application of FDI in Nigeria and concluded that the alteration of the extent laws regulating the different sectors to promote the inflow of FDI in Nigeria is necessary.
Intellectual property law can be an obstacle to FDI. This is because the Nigerian intellectual property laws are not effectively enforced, making it difficult for foreign investors to protect their rights. There are also widespread counterfeit and piracy of product software and creative works are available in the country, inadequate legal laws and lack of specific legislation for current and emerging technology hinders FDI coming into the country.

The legislative obstacles that regulate the dealing with foreign investor (FDI) laws in Nigeria are not clear and some instances they conflict with each other legislation, inadequate guarantees of freedom to transfer profit discourages FDI flow in Nigeria. Those that have invested before are pulling out of the country. Other obstacles are; corruption; financial and administrative corruption deter both foreign investment and local investment. The investor goes away from areas where corruption takes place regularly, because investing in such areas contribute in increasing the cost of the project. The government officials and employees usually demands for the payment of bribe during the process of doing business. This art normally discourage foreign investors from investing. Moreover, when you look at the corruption index rating in the world, you will discover Nigeria to number 145 out of 180 countries in transparency international report in the year 2023 in corruption perception index. Nigeria receives a score of 25 out of 100 points, indicating a high level of perceived corruption [25].

Infrastructures; the result shows that Nigeria has a weak and lack of infrastructures due to corruption, insecurity and lack of political will as majority of the infrastructural projects executed are of low quality due to usage of low or substandard materials that are below the standards specified in the contract agreements, no good roads, railways etc.

5 Conclusions

The main goal of the research was to examine whether tax laws, security serves as an obstacle to FDI in Nigeria. According to the findings of the study, there are many obstacles and challenges that have and are currently preventing foreign investors to come and invest their capital in Nigeria. These are:

Nigeria charges high corporate income tax rate compared to its neighboring countries which reduces the amount of profit after tax the companies will make and hence discourage FDI inflow into the country. Pioneer status application and approval procedures can be delayed and burdensome. Will be foreign investors who needs protection and immediate decision-making before investing their hard earn funds in Nigeria may be deterred. Moreso, there are instances where so many government parastatals manage and interpret the pioneer status arrangement differently. The difference in approach usually leads to confusion and impair the selection of investment distination in the counrty. Moreover, the pioneer status in Nigeria is the lowest compared to other West African countries and hence, investors always select countries with long pioneer period to invest. Hence, investors prefer countries with long period of tax holiday to invest. It was discovered that the worsening security situation in Nigeria as a result of the activities of bokoharam, Fulani haders, kidnapping, army banditry, militancy is responsible for the discouragement of Foreign Direct Investment. On the aspect of law, the local content Act was said to have violates national treatment of investorsas as it is found in bilateral investment agreements as concerns Nigeria. This shows that the local content Act has to be repelled to be in-turn with the current economic realities accentuated by globalization. The inability to amend this law has contributed in limiting the coming in to Nigeria of foreign investor funds for direct investment.

The Nigerian intellectual property laws are not effectively enforced, making it difficult for foreign investors to protect their rights. There are also widespread counterfeit and piracy of product software and creative works are available in the country, inadequate legal laws and lack of specific legislation for current and emerging technology hinders foreign direct investment into the country. Administrative bottlenecks and financial corruption in the point of registration and application for pioneer company discourages FDI inflows.

5.1 Recommendations

Nigerian government should reconsider reducing its corporate income tax rate and make it attractive for foreign investors to make Nigeria to be the destination for FDI.
Nigerian government with low corporate income tax holidays or pioneer period for foreigners coming to open their new businesses should as a matter of urgency come up with tax policy that will increase their corporate income tax holiday or pioneer periods for newly created companies in order to encourage foreign investment selection in its favor.
Government should makesure that money budgeted for purchase of equipments and technology to track and end insecurity of life and properties are utilized and directed to the necessary quarters to achieve the motive to which they were provided for. This will end insecurity and encourage the coming in of foreign direct investors in the country. Moreover, the government should motivate our security men to boast their morale to fight insecurity so as to ensure national security of life and properties and peace of mind for all categories of people leaving in the country.

Government should amend the local content law and make provisions that will encourage foreigners to invest their capital in the country. The Nigerian intellectual property laws should be enforced to give confidence to foreign investors to come and invest knowing fully that they can also protect their right when the need arise.

The government should makesure they work tirelessly to remove administrative bottleneck in the process of establishing new companies, financial corruption and ensure transparency and accountability in the process. This will encourage and attract foreigners and local investors to invest their funds in the economy. Government should as a matter of urgency reduces adminitrative red tape and streamline the application process for granting pioneer status.

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